

EXHIBIT A



E. EVANS WOHLFORTH, JR.

666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com
Direct (212) 451-2954

Admitted in New York
and New Jersey

February 16, 2024

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (JKS) (CLW)

Dear Judge Wolfson:

In a motion on February 7, 2024, Defendant Save On SP, LLC (“**SaveOn**”) moved Your Honor to compel Johnson & Johnson Health Care Systems, Inc. (with its affiliates, “**J&J**”) to run the following search terms—“CAPa” OR “CAPm” OR “adjustment program” (the “**CAP Terms**”)—over the files of its existing custodians, without any limitation, from July 1, 2022 to November 7, 2023, as part of J&J’s refresh production. Since then, J&J has also refused to run the unlimited CAP Terms over the files of newly ordered custodians Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, L.D. Platt, Alison Barklage, Scott White, Blasine Penkowski, and Karen Lade for any time period. SaveOn thus brings this additional motion to compel J&J to run the unlimited CAP Terms for its new custodians as well.

The Cost Adjustment Program or Copay Adjustment Program (the “CAP Program”) is J&J’s formal response to “accumulators” and “maximizers,” which it believes includes SaveOn. Dkt. 166 at 4. Documents about the CAP Program go to the heart of SaveOn’s mitigation defense: J&J used it to identify patients on SaveOn-advised plans or plans that it believed were maximizers or accumulators, Dkt. 166 Ex. 1, but it disbursed copay assistance funds to them anyway. Such evidence could limit or even eliminate J&J’s claims for damages. Judge Waldor and Your Honor have both recognized the CAP Program’s relevance. Dkt. 173 at 2-3; Dkt. 192 at 25-26.

In her November 7, 2023 Order, Judge Waldor ordered J&J to add Kinne, Longbothum, Shontz, Hoffman, Platt, and Barklage as custodians, noting that each was “identified with regard to the CAP program,” Dkt 173 at 2; *see also* Ex. 1 at 110:20-111:5 (Jan. 24, 2024 Hr’g Tr.) (“[T]hese are CAP people.”). In Your Honor’s February 6, 2024 Order, Your Honor ordered J&J to add White, Penkowski, and Lade, who also had relevant documents regarding the CAP Program in particular and J&J’s responses to accumulators, maximizers, and SaveOn generally. Dkt. 192 at 28-29.

In SaveOn’s motions asking the Court to compel J&J to add these custodians, SaveOn asked that J&J run all previously agreed-upon search terms over their files. *See* Dkt 165 at 15; Ex. 2 (Dec. 28, 2023 Ltr.); Ex. 3 (Jan. 16, 2024 Ltr.). J&J previously agreed to run the CAP Terms for its existing custodians for the period from April 1, 2016 to July 1, 2022. Ex. 4 at App’x 1 & n.7 (Dec. 22, 2023 Ltr.). Remarkably, however, J&J now refuses to run the CAP Terms over any time

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period for any new custodian without the limitation that the document also explicitly mention SaveOnSP. Ex. 5 (Feb. 14, 2024 Ltr.).¹

By refusing to run the CAP Terms without a SaveOn limiter, J&J renders the CAP Terms meaningless. J&J is already running search terms like SaveOnSP, SaveOn, SOSp, and other variations on SaveOn's name. *See* Ex. 4 at App'x 1 (Dec. 22, 2023 Ltr.). Running the CAP Terms limited to documents that already mention SaveOnSP means that J&J's proposed modification to the CAP Terms will result in *no new documents*. This would be a highly perverse result: J&J would effectively run no new search terms related to the CAP Program across the files of the new custodians, who were found to be highly relevant to that program.

Documents related to the CAP Program are relevant whether they explicitly mention SaveOn or not, because the purpose of the CAP Program is to respond to SaveOn and businesses like it. *See, e.g.*, Ex. 6, at 1, 2, 8 (TRIALCARD_00005044) ([REDACTED])

[REDACTED]). From other custodians, J&J has produced documents relevant to that program that do not refer directly to SaveOn. *See, e.g.*, Ex. 7 (JJHCS_00142757) ([REDACTED])

[REDACTED];
Ex. 8 (JJHCS_00001497) ([REDACTED])

[REDACTED] Ex. 9 (JJHCS_00002774) ([REDACTED])

¹ The only terms regarding the CAP program that J&J has indicated a willingness to run are: (1) (CAPa OR CAPm OR "adjustment program") AND (SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSp) and (2) ("CAPa" OR "CAPm" OR "adjustment program") AND "Save On" (case sensitive).

[REDACTED]

[REDACTED] J&J's proposal to use a SaveOn limiter would let J&J withhold such documents in the new custodians' files.

J&J has not advanced any claim that running the unlimited CAP Terms for the new custodians would be burdensome. It agreed to run those terms for its previous custodians from April 1, 2016 to July 1, 2022 without such an objection. SaveOn asked that, if J&J objected on burden grounds, it provide hit counts for any term it refused to add, Ex. 10 at 2 (Jan. 29, 2024 Ltr.); J&J did not do so, Ex. 5 (Feb. 14, 2024 Ltr.).

J&J's sole basis for its position is to cite Paragraph 2 of Judge Waldor's November 7, 2023 Order regarding Docket Entry No. 166, which compelled J&J to run the CAP Terms with a SaveOn limiter for its existing custodians from January 1, 2022 to the present, Ex. 11 (Feb. 15, 2024 Ltr.). Paragraph 2 does not support J&J's position. *First*, by its terms, it did not apply to documents before 2022, so it is no basis for J&J to refuse to run the unlimited CAP Terms before then. (In Dkt. 166, SaveOn moved for the CAP Terms to be run from July 1, 2022 to the present because, at the time, the parties had generally agreed to cut off discovery at July 1, 2022.) *Second*, Judge Waldor's Order could not have applied to White, Penkowski, and Lade because she did not order J&J to add them as custodians; Your Honor would not do that until January 2024. *Third*, J&J previously argued that Paragraph 2 allowed it to apply a SaveOn limiter to the CAP Terms for other custodians, Ex. 12 at 5 n.1 (Jan. 22, 2024 Ltr.), and Your Honor disagreed, holding that J&J had to apply a broader set of search terms related to the CAP Program. Dkt. 192 at 26. *Fourth*, as stated in SaveOn's motion regarding J&J's refusal to run the unlimited CAP Terms for its existing custodians, Paragraph 2 does not trump Paragraph 3's order that J&J update its production "*without limitation*," which includes running the unlimited CAP Terms to which it previously agreed.

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Ex. 13 at 1-2 (Feb. 7, 2024 Ltr.). *Finally*, in any event, J&J should run the unlimited CAP Terms here because the new custodians were specifically identified as being involved with the CAP Program and thus are highly likely to have relevant documents regarding that program.

J&J's position here is part of an ongoing effort to withhold documents about the CAP Program that could cripple J&J's claims. Although the program took effect months before J&J filed its Complaint, J&J concealed the existence of that program when the parties initially agreed on discovery parameters. Once SaveOn learned of the program, J&J resisted adding search terms and custodians related to that program for months, agreeing finally to run the CAP Terms over the custodial files of the existing custodians from April 1, 2016 through July 1, 2022. Ex. 14 (Sept. 29, 2023 Email from J. Long to E. Snow). Judge Waldor ordered the parties to refresh their productions through November 7, 2023 "*without limitation*," Dkt. 173 at 3, but J&J is now trying to back out of its previous agreement to run the unlimited CAP Terms both by refusing to run those terms for its prior custodians from July 1, 2022 to the present, Feb. 7, 2024 Ltr, and now by refusing to run those terms for its new custodians during any time period.² This must stop. The CAP Program is highly relevant, and J&J must apply the unlimited CAP Terms in searching its custodians' documents.

SaveOn appreciates Your Honor's attention to this matter.

Respectfully submitted,

/s/ E. Evans Wohlforth, Jr.

E. Evans Wohlforth, Jr.

Robinson & Cole LLP

666 Third Avenue, 20th floor

² J&J asserts that this dispute will be decided by Your Honor's ruling on SaveOn's February 7, 2024 letter. In fact, that letter addressed only J&J's refusal to run the unlimited CAP Terms for its existing custodians from July 1, 2022 to November 7, 2023. This motion addresses J&J's subsequent refusal to run the unlimited CAP Terms for its new custodians during any time period.

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New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com

Philippe Z. Selendy (admitted *pro hac vice*)
Andrew R. Dunlap (admitted *pro hac vice*)
Meredith Nelson (admitted *pro hac vice*)
Elizabeth H. Snow (admitted *pro hac vice*)
SELENDY GAY PLLC
1290 Avenue of the Americas
New York, NY 10104
(212) 390-9000

pselendy@selendygay.com
adunlap@selendygay.com
mnelson@selendygay.com
esnow@selendygay.com

Attorneys for Defendant Save On SP, LLC

EXHIBIT 1

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEW JERSEY

3 CIVIL ACTION NO. 22-2632

4 JOHNSON & JOHNSON HEALTH CARE

5 SYSTEMS, INC.,

6 Plaintiff,

TRANSCRIPT

7 vs.

OF

8 SAVE ON SP, LLC,

PROCEEDINGS

9 Defendant.

10 - - - - -

11

12 TRANSCRIPT of the stenographic notes of
13 the proceedings in the above-entitled matter as
14 taken by and before RUTHANNE UNGERLEIDER, a
15 Certified Court Reporter and Notary Public of the
16 State of New Jersey, held at the office of
17 LOWENSTEIN SANDLER LLP, One Lowenstein Drive,
18 Roseland, New Jersey, on Wednesday, January 24,
19 2024, commencing at approximately 10:00 in the
20 forenoon.

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25

1 B E F O R E:

2 HONORABLE FRED A. L. WOLFSON

3 A P P E A R A N C E S:

4 PATTERSON BELKNAP WEBB & TYLER LLP

1133 Avenue of the Americas

5 New York, New York 10036

BY: HARRY SANDICK, ESQ.

6 JULIA LONG, ESQ.

GEORGE A. LoBIONDO, ESQ.

7 SARA A. ARROW, ESQ.

Attorneys for Plaintiff

8

SILLS CUMMIS & GROSS P.C.

9 The Legal Center

One Riverfront Plaza

10 Newark, New Jersey 07102

BY: JEFFREY J. GREENBAUM, ESQ. (VIA ZOOM)

11 Attorneys for Plaintiff

12 SILLS CUMMIS & GROSS P.C.

101 Park Avenue, 28th Floor

13 New York, New York 10178

BY: KATHERINE M. LIEB, ESQ.

14 Attorneys for Plaintiff

15 SELENDY GAY ELSBERG PLLC

1290 Avenue of the Americas

16 New York, New York 10104

BY: ANDREW R. DUNLAP, ESQ.

17 ELIZABETH SNOW, ESQ.

HANNAH MILES, ESQ.

18 Attorneys for Defendant

19 ROBINSON & COLE LLP

666 Third Avenue 20th Floor

20 New York, New York 10017

BY: E. EVANS WOHLFORTH, JR., ESQ.

21 Attorneys for Defendant

22

23 ALSO PRESENT:

SHERYN GEORGE, JJHCS In-House Counsel

24 WAYNE FANG, ESQ., Lowenstein Sandler

25

1 JUDGE WOLFSON: All right.

2 We're here today in connection with the
3 outstanding disputes, and when we had our Zoom
4 conference several weeks ago I indicated I wanted to
5 address whatever had been left open by Judge Waldor.
6 She's had many, many conferences in this case,
7 resolved many issues on the record, entered some
8 orders, and there were a couple of substantial issues
9 that have really been kicking around for a while
10 where she was looking for everyone to meet and confer
11 and see where you ended up. And, primarily, they're
12 going to relate to discovery regarding the terms and
13 conditions, there was financial information, and now
14 there are other things to do with custodians, and I'm
15 going to try to get to everything. But I want to
16 deal with this, in the first instance, with regard to
17 those pending discovery disputes, let me turn first
18 to the documents dealing with the CarePath terms and
19 conditions that have been talked about for quite a
20 while now and what should be discoverable with regard
21 to the drafting, understanding enforcement of the
22 terms and conditions.

23 We know that, in particular, what's
24 being looked at is that this program is supposed to
25 fall under the "Other Offer" category. It's not the

1 coupon. No one is asserting that it falls within the
2 other language. Right? Everybody agrees? Yes? So
3 it's all about the other offer.

4 MR. GREENBAUM: Your Honor, may I make
5 two short preliminary points for context to just kind
6 of set the table at least from our perspective?

7 JUDGE WOLFSON: I don't think it's
8 necessary at this point.

9 Let me move forward.

10 And I will say this -- can I go off the
11 record one moment?

12 (Brief recess taken.)

13 JUDGE WOLFSON: So let's break this down
14 into what's there.

15 There's no doubt -- or there's no
16 dispute that there certainly is relevance to evidence
17 regarding what this term means. The question is, how
18 much discovery is to be given, and where does it go,
19 and what are our time tables for doing that, et
20 cetera? And we're going to get to that.

21 The Plaintiff has said that it produced
22 thousands of pages of documents, approximately 1200,
23 in response to search terms that were used to find
24 documents relating to terms and conditions from
25 April 2016 to July 1, 2022 that had been an agreed

1 upon discovery period, however, the Court at the last
2 hearing had directed the parties to continue to
3 update discovery through October 2023.

4 So now we're all dealing with updating,
5 updating.

6 Okay.

7 There were requests also for documents
8 that bear on -- if I can, for short, I know it's
9 JJHCS -- if I can say J&J for purposes of the
10 hearing. We know it's a different entity, but just
11 for ease -- J&J's enforcement and understanding of
12 the relevant terms and conditions. And Plaintiff
13 says also that J&J has investigated availability of
14 additional documents and based on that investigation
15 understands that the terms and conditions at issue
16 are standard, uncontroversial terms, used in most, if
17 not all, manufacturer co-pay support programs that
18 long predate the time period of 2016 to 2023. And
19 J&J has offered to review additional documents to see
20 what else might fall within that relevant time frame.

21 J&J has indicated that documents that go
22 further back to 2009, which is what really I think
23 SaveOn has been talking about, argues that either
24 they're irrelevant and also enforcement of terms and
25 conditions relating to other terms besides "other

1 offer." I mean, I have all the arguments here.

2 So let's move into this.

3 Now, in this connection too we have
4 custodian issues, and you agreed to some
5 modifications.

6 I think what we have here is Defendant
7 asked Plaintiff to conduct a search for documents
8 relating to the drafting of the general T&C's to add
9 additional search terms used designed to identify
10 documents relating to drafting, understanding and
11 enforcement, and add two custodians that J&J
12 identified as responsible for drafting the new
13 Stelara and Tremfya T&C's and to extend a search for
14 documents relating to enforcement of the new Stelara
15 and Tremfya T&C's.

16 Plaintiff has indicated that it will
17 search eight more months of one custodian's documents
18 and add two limited search terms.

19 So let's talk about where we are.

20 With regard to the requests, it was
21 requested that Plaintiffs identify predecessor
22 programs from which CarePath's general T&C's were
23 drawn. And I think there are also interrogatories on
24 that topic. Right?

25 MR. DUNLAP: Yes, are honor.

1 MR. SANDICK: I don't think that there
2 is an interrogatory that specifically tracks what
3 they asked for in our discovery letters. And not to
4 get sidetracked, but one of the points of contention
5 is that if they want detailed historical information
6 about things within JJHCS, I think the discovery
7 device for that is an interrogatory. If they
8 propound one, we'll answer it subject to objections.
9 But I don't think that they have propounded one that
10 would cover all of the issues that they have raised
11 and have tried to use discovery correspondence as a
12 mechanism essentially as a substitute for
13 interrogatories. And they're not at their
14 interrogatory cap. They could propound
15 interrogatories.

16 MR. DUNLAP: Could I respond to that,
17 your Honor?

18 JUDGE WOLFSON: Sure.

19 MR. DUNLAP: Just briefly.

20 We served document requests asking for
21 documents relating to the drafting of the terms and
22 conditions. We served interrogatories asking them to
23 identify individuals with responsibility for the
24 drafting of the terms and conditions. It turns out
25 that this specific term and condition, which is the

1 heart of part of the case, [REDACTED]
[REDACTED] We think our
3 existing interrogatory and document requests are
4 broad enough to cover whoever drafted it, whether
5 they were working at JJHCS or some other predecessor
6 program. So we think it's covered.

7 JUDGE WOLFSON: Okay.

8 We're going to talk about it today,
9 whether it was specifically asked in that way or not,
10 but I'm going to get to the bottom of this and be
11 done with it so that we have this resolved.

12 Now, in that regard, you've asked for I
13 think January 1, 2009 to the present, right?

14 MR. DUNLAP: Yes.

15 JUDGE WOLFSON: Because it would include
16 predecessor programs.

17 MR. DUNLAP: Because that is our
18 understanding of when it began. Obviously, if the
19 program began earlier, at some other time, then we
20 would want it to be tailored, our issue, but they
21 haven't given us information, so it's hard for us to
22 tailor our understanding of when the program started.

23 JUDGE WOLFSON: Okay.

24 Why would you, Mr. Sandick, believe
25 that -- you know, we're looking for what the meaning

1 of this is -- that if you had predecessor programs
2 that used the same term, why would that not be
3 relevant at a discovery stage?

4 MR. SANDICK: So, a couple of things.

5 It's not so much that we're saying it
6 would be irrelevant. What we're saying is, number
7 one, as we've explained to the Defendants before, we
8 do not have consistent record keeping within our
9 client's files.

10 JUDGE WOLFSON: I'm going to get to
11 retention.

12 What I'm saying is, I want to take this
13 piece by piece. Which is, if we start with
14 relevancy, now let's go to what the problems are with
15 producing it.

16 MR. SANDICK: Sure.

17 I think the relevance issue is this: As
18 to the meaning of "other offer" in the context of a
19 program like SaveOn, an accumulator or maximizer
20 program, those programs did not exist back in --
21 SaveOn was created in 2016. So trying to figure out
22 prior to 2016 what the terms and conditions meant
23 with respect to a company like SaveOn I think is not
24 a productive project.

25 Also, for that matter, the current

1 CarePath system, which started in around 2016, also
2 did not exist prior to that.

3 To be short, J&J through JJHCS has tried
4 to help patients pay for co-pay support, help them
5 pay their deductibles on drugs for many years, but
6 the program was different.

7 So we're going to a time period when
8 SaveOn did not exist, when the CarePath program we're
9 talking about did not exist, and in a time period
10 where -- and I know your Honor said you'll get to
11 this -- but where the document record is not what it
12 is in more recent years because 2013 is a long time
13 ago.

14 JUDGE WOLFSON: And I'll deal with that,
15 but I have to say I don't agree with your position
16 on -- that it would not be relevant simply because
17 programs like SaveOn didn't exist, whether
18 accumulator or maximizer programs, or CarePath didn't
19 come into being.

20 You know, you have indicated that these
21 are terms, that is the position you have taken, that,
22 you know, through maybe time, this is a term that is
23 used. So in creating that, how broad a meaning you
24 thought that had, what it meant outside of the other
25 things you described, coupons, rebates, et cetera,

1 that it could encompass, it may have nothing to do
2 with this, but that is okay. So we need to answer
3 that question.

4 I do not agree with you. I do agree
5 with SaveOn that I believe that going back in time is
6 relevant to the extent it was included in predecessor
7 programs. It had to have a meaning. If anyone even
8 discussed it. Maybe they didn't. And maybe that is
9 what will turn up. But that is an answer in itself.

10 Now, talking about availability of
11 documents, because you have indicated that there are
12 preservation of retention issues, but I don't know
13 that you have provided anything that tells us what
14 those retention policies are or the issues as to why
15 they don't exist or how limited they are.

16 That has to be provided so that I could
17 determine, or your adversaries can determine, what
18 was done, and what the policy was, and whether it was
19 followed here.

20 That is always what we do when you have
21 a relevant document and a relevant time period and
22 there may be an issue.

23 So you're going to have to produce that
24 retention policy.

25 To the extent that you do find the

1 documents regardless of that retention policy, I'm
2 ordering that they be produced.

3 Now, you've also indicated it's too
4 cumbersome, but you haven't done a search going back
5 because you haven't thought you had to produce them,
6 and the burden is on you to explain why it would be
7 burdensome. And, frankly, if you're telling me you
8 may have nothing before 2013, it doesn't sound very
9 burdensome to me. So I'm not buying that at the
10 moment without more.

11 For me, when I look at all of this,
12 rather this one seemed like an easy one, and I think
13 it's totally appropriate.

14 The crux of this case is going to be
15 what "other offer" means. And in Judge Vazquez's
16 opinion in very short order in that last paragraph it
17 said this is going to need discovery and it could be
18 the subject of a summary judgment motion, but not a
19 dismissal motion, or maybe it goes to a trial, but he
20 noted that that was something that required
21 discovery. And that term is going to be critical
22 here.

23 MR. SANDICK: So, your Honor, we will
24 come back to you then with a submission on the
25 subject of burden and accessibility because I do

1 believe those are substantial issues here. That, you
2 know, very few companies would have sort of coherent
3 organized records going back 15 years or longer. And
4 so I do think we have an issue that we need to bring
5 to your Honor's attention on this.

6 JUDGE WOLFSON: Okay.

7 You're going to have to really convince
8 me because, first of all, I don't know what your
9 retention policy is, but on the burdenness, I know
10 that Judge Waldor kept putting burden to the side.
11 She said, a hundred million dollar case, it's a big
12 case, big companies, don't argue burden to me.

13 I'm not quite sure I always agree with
14 that because burden is something you are allowed to
15 assert. I'm not preventing you from doing so, but I
16 think you have a high hurdle there.

17 So you want to move this along, I want
18 to also, so those answers you're going to have to get
19 to me pretty quickly.

20 MR. SANDICK: We'll do that, your Honor.

21 JUDGE WOLFSON: Okay, when?

22 MR. SANDICK: I would like to talk to
23 people internally to figure out, but today is
24 Wednesday. Next week?

25 JUDGE WOLFSON: Sure.

1 MR. SANDICK: Okay.

2 JUDGE WOLFSON: That would be fine.

3 You want a week from today?

4 The end of next week?

5 MR. SANDICK: Let me just confer for a
6 moment.

7 Next Friday.

8 JUDGE WOLFSON: Next Friday is fine.

9 MR. DUNLAP: I assume you would want us
10 to meet and confer about this.

11 JUDGE WOLFSON: Yes.

12 MR. DUNLAP: Part of our concern is that
13 they haven't been really forthcoming in explaining to
14 us what their preservation or retention issues are.

15 JUDGE WOLFSON: Now you're going to get
16 it.

17 MR. DUNLAP: I assume you want the
18 parties to meet and confer before they file the
19 motion.

20 JUDGE WOLFSON: Yeah.

21 MR. SANDICK: I mean, I'm happy to talk
22 to Andrew any time. We're going to file something on
23 this. And I do not agree that we have been not
24 forthcoming. We explained that 2013 is the crucial
25 time period for our client when there were changes in

1 the record keeping system and that before that time,
2 all though I can't say that there aren't documents
3 here and there sort of lying around, so to speak, the
4 digital equivalent of that, there is no consistent
5 effort to retain documents from that time period.

6 JUDGE WOLFSON: Look, they haven't
7 gotten that, and, you know, simply indicating that is
8 not enough.

9 They said they would have an answer by
10 next Friday. So what I'll direct is that information
11 be given to you, as to burden and retention, you can
12 meet and confer, and then tee it up for me.

13 MR. SANDICK: Would you like us to
14 submit it to your Honor in parallel next Friday?

15 JUDGE WOLFSON: I would love to see it.

16 MR. SANDICK: We will send it to you and
17 of course copy defense counsel by next Friday.

18 JUDGE WOLFSON: Okay.

19 And then you can meet and confer and
20 we'll see if we have an issue.

21 As I said, but from my perspective on
22 the burden aspect, it's going to have to be a pretty
23 darn heavy burden because I think this is highly
24 relevant information, and so on a weighing here as to
25 the relevance versus the burden on you, I think you

1 know where I'm going to come out.

2 All right. Let's move onto the next
3 topic.

4 These are, quote, the enforcement
5 documents.

6 So let's talk about this issue.

7 This is I think where it -- the issue is
8 whether it's enforcing all of the terms of that or
9 only the other offer, correct? That's where we are.

10 MR. DUNLAP: I think that is part of it.
11 Part of it is also what search terms they employ.
12 Since this submission went in we met and conferred
13 with the other side and narrowed the search terms.
14 It cuts out about 20 percent of the documents that
15 were identified in my previous submission.

16 JUDGE WOLFSON: Okay.

17 So tell me what is left on this issue
18 that you want to argue today.

19 MR. DUNLAP: Well, we believe that they
20 should run a broader search for documents relating to
21 the meaning and understanding and enforcement of the
22 general terms and conditions, the "other offer"
23 provision.

24 JUDGE WOLFSON: The "other offer"
25 provision is good.

1 MR. DUNLAP: Yes.

2 Well, we think there are other portions
3 of the general terms and conditions that are relevant
4 as well.

5 So the way this works is that a lot of
6 the -- they call this the SaveOn program, but a lot
7 of the things they're complaining about, the setting
8 of the co-pays, the not counting towards
9 out-of-pocket max, are actually plan terms. Those
10 are part of what the commercial plan sets as terms
11 for their members. And there are references within
12 the terms and conditions health plans. And we
13 think -- part of our argument is that that indicates
14 whatever "other offer" means, it can't mean plan
15 terms. So we think it can't be limited just to the
16 "other offer" provision. That is point one.

17 Point two is, based on what we have seen
18 in the documents we don't --

19 JUDGE WOLFSON: So let me think of
20 though what you're looking for in that regard.

21 You're not interested in coupons,
22 rebates, and the other things that are in there.

23 I want to make sure how we're limiting
24 this.

25 MR. DUNLAP: Well, we are to the extent

1 that we want to understand, there is an affirmative
2 case did they actually believe SaveOn was a coupon or
3 other offer or a program.

4 JUDGE WOLFSON: I think we are clear
5 that you said it's only other offer.

6 MR. SANDICK: The other offer is the
7 only term that we're doing.

8 There is a long list of terms and
9 conditions that patients have to agree, most of them
10 have nothing to do in not even any conceivable way
11 with this case.

12 For example, you cannot by federal law
13 be on Medicare or Medicaid and be part of SaveOn.
14 That is prohibition. Children are not eligible to
15 receive drugs through this program. And there are a
16 number of other things. None of them are within the
17 scope of what we are alleging to be the contract that
18 was tortiously interfered with. That's why the focus
19 has been -- in Judge Vasquez's decision and in our
20 complaint -- on the "other offer" language that your
21 Honor has spotlighted.

22 JUDGE WOLFSON: So we're limiting it to
23 the only contractual term that they think is "other
24 offer."

25 MR. DUNLAP: Right.

1 And I think we have a couple of issues
2 with that.

3 So, first, as you may have seen if
4 you've looked at the Motion to Dismiss briefing,
5 "other offer" appears in a string of other terms,
6 coupon, et cetera. And under ejusdem generis, if I'm
7 pronouncing that doctrine correctly, you would
8 understand what "other offer" means by looking at
9 what the other terms in that clause mean.

10 So what they understand a coupon to
11 mean, what they understand another offer of financial
12 assistance to mean, is relevant to determining what
13 in context the "other offer" provision means.

14 So we do want to understand what they
15 think that means.

16 I would also make the point that --

17 JUDGE WOLFSON: But we're on the
18 enforcement documents now, not on the actual
19 interpretation, terms, conditions.

20 MR. DUNLAP: Well, but that period we're
21 talking about from 2016 through 2022 we're not just
22 looking for documents on enforcement, it also goes to
23 the meaning and their understanding of what the
24 "other offer" provision meant during that time
25 period. And we submit to understand that you have to

1 look not just at "other offer," but also at the other
2 terms that are in the clause where it appears other
3 provisions in the terms and conditions that relate to
4 health plans, there is a lot of contractual context
5 that we need in order to argue about what "other
6 offer" means.

7 But I do want to turn to enforcement
8 also.

9 So as Mr. Sandick said, there are other
10 eligibility requirements that are not at issue. For
11 example, if you're on Medicare or Medicaid, or you're
12 not of a certain age, et cetera.

13 Part of our argument is that until they
14 decided to bring this lawsuit we don't think J&J
15 actually ever contemplated that the "other offer"
16 provision covered members on SaveOn plans. They
17 never actually thought that being on a SaveOn plan
18 ran afoul of the "other offer" provision.

19 And part of the evidence of that will be
20 that they did enforce eligibility criteria. That
21 they were able to enforce other parts of the terms
22 and conditions, on Medicare, Medicaid, on age
23 requirements, et cetera, but they never sought to
24 enforce their new position on SaveOn until they
25 brought this lawsuit.

1 We think that information is highly
2 relevant circumstantial evidence to show their course
3 of performance was they didn't actually believe that
4 "other offer" applied to the SaveOn program.

5 And so we need to see what they were
6 doing in terms of enforcing the terms and conditions
7 generally not just on "other offer."

8 MR. SANDICK: Your Honor, two things:
9 First of all, on the subject of enforcement, since
10 these letters were submitted I think in August we
11 have already agreed to produce what are either
12 directly through us or by asking our vendor, a
13 company called Trial Card, to produce what are known
14 as benefits investigations. And those are the
15 enforcement documents. We're in the process of
16 making those productions for the relevant time period
17 right now.

18 So the enforcement issue I think by
19 virtue of concessions made by HCS, by J&J, is already
20 being addressed.

21 I want to also though pause for a moment
22 on the subject of whether the other terms next to
23 "other offer" in that particular term and condition
24 are relevant.

25 I think it's important to say two

1 things. First of all, this particular language,
2 coupon, discount, prescription savings card, free
3 trial, those are primarily what is driving the hit
4 count for the search terms they have proposed.
5 Something like maybe two-thirds or three-quarters of
6 the documents that they are asking to be reviewed
7 relate not to "other offer," which, by the way, have
8 already been the subject of search terms. That's
9 why, as your Honor pointed out, we have already
10 produced thousands of pages of documents. But the
11 search terms that they are proposing go way beyond
12 that, into any time that someone uses the word
13 "coupon" and the word "Janssen," we would have to
14 produce those documents.

15 That is why Judge Waldor told -- well,
16 one of the reasons why she told them back in October
17 and in the order that they needed to narrow their
18 requests, not just the search terms, but the requests
19 themselves, that this is too broad, it goes beyond
20 the scope of what is actually necessary to resolve
21 this case.

22 And if we were focusing on things like
23 "other offer" language, again, we've already made a
24 lot of production on that. And we had offered
25 before, as your Honor pointed out, to do some

1 additional production on that subject.

2 It's when you blow it open into
3 everything -- every word that is used on the sheet of
4 terms and conditions that the burden in terms of
5 document review goes through the roof. And as we
6 pointed out, probably for very little benefit.

7 Because these are standard industry terms that are
8 used in the co-pay program area and also used in all
9 sorts of other consumer areas. The ABA said this is
10 a standard term in all consumer discount programs.

11 JUDGE WOLFSON: So what I'm hearing is,
12 but what I want to understand too, is you are going
13 to produce documents with regard to this, quote,
14 benefits investigation.

15 What I want to get back to you here, Mr.
16 Dunlap, what you said a couple of moments ago is what
17 is important to you is to give definition to what
18 they're enforcing and what they're not enforcing, you
19 want to know, well, were you enforcing all of these
20 other programs that you have listed, whether they
21 were Medicare, Medicaid, and all the various coupons
22 and other things, right?

23 MR. DUNLAP: The eligibility questions.

24 JUDGE WOLFSON: The eligibility
25 questions.

1 You want to know, were you diligently
2 and regularly enforcing. You knew SaveOn was there
3 and you didn't do it. And you want to make an
4 argument, so guess what, we're going to tell you, you
5 never thought of any of these exclusions.

6 I hear what you're saying. The question
7 is, how many documents do we need? If they're going
8 to give you what we would call the benefits
9 investigations, would that not turn up every time
10 that they questioned eligibility?

11 MR. DUNLAP: We don't think so, your
12 Honor.

13 Let me talk about the benefits
14 investigations.

15 So what they said at the last conference
16 was that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 They have so far declined to give us any
2 documents related to those investigations, just the
3 final reports themselves.

4 We got a production the other day. We
5 had some issues with that.

6 What they're offering to give us is
7 very, very narrow. They are not offering to give us
8 benefits investigations going to the full relevant
9 time period of this case from 2016 to present. [REDACTED]

[REDACTED]
[REDACTED] And they're
12 not offering to give us any documents, there are no
13 enforcement search terms, for example, that go to the
14 enforcement of eligibility criteria or the meaning of
15 things like coupon or discount or benefit card.

16 And I hear what opposing counsel is
17 saying about the search terms.

18 We have proposed search terms to them.
19 We have narrowed those search terms since we put in
20 our letter by about 20 percent. We have not received
21 I believe a counteroffer from the other side about
22 which of our search terms they would be willing to
23 run. Their response has generally been no.
24 Certainly inviting us to negotiate against ourselves.

25 We're always glad to talk about

appropriate search terms here, but we don't have anything on enforcement. We're not convinced that just the benefits investigations process will give us what we need here.

I'm glad to address the other points he made, but I think those are the main ones.

MR. SANDICK: Your Honor, I think there are a few things I would like to address and correct.

So, first of all, it's not true that we aren't giving other documents relating to the subject of enforcement of the terms and conditions against accumulator and maximizer programs. We are running to some extent voluntarily and to some extent in response to Judge Waldor's order the so-called CAP terms.

██████████

1 As we said in some of our papers, SaveOn
2 goes to great effort to prevent anyone from finding
3 out which patients are in the program. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED] they go to great length to
7 prevent us from figuring out who is in the program.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] That's why we have been producing for that
13 category from 2022, the beginning of the year, now up
14 through the date of Judge Waldor's order.

15 JUDGE WOLFSON: Well, let me go back a
16 moment.

17 We got two things going on. Now we're
18 talking about dates, how far back we go, but the
19 other is the various enforcement efforts with regard
20 to eligibility, which they have been talking about.
21 And the position there is, SaveOn was in existence
22 prior to 2022. The fact that you started to take
23 some steps in response to what you believe was a
24 problematic program and would violate your terms in
25 that time frame doesn't address their concern, which

1 is, okay, we were around before, and you also came to
2 this conclusion in 2022, whatever, but we'd like to
3 see what generally did you do as enforcement efforts
4 with regard to other eligibility criteria. Do you
5 police generally? Do you let things go?

6 I mean, these are some of the arguments.

7 I know you have some defenses you also
8 want to raise on, you know, latches, mitigations,
9 whatever, steps that were not taking, but I think
10 that there needs to be some understanding of,
11 generally, what are your enforcement efforts that you
12 take with regard to eligibility criteria.

13 Now, it has to be cabined in some way.
14 I don't want it to be so broad because there are lots
15 of things here and much of it may not be relevant.
16 So I think we have to understand, or they have to
17 understand, how do you go about enforcing, when do
18 you do so, and there is more information that is
19 needed.

20 MR. SANDICK: So, your Honor, a couple
21 of things: First of all, the subject of benefits
22 investigations. Benefits investigations are,
23 generally speaking, not relevant to this case because
24 they don't touch on the application of the "other
25 offer" term, they don't touch on how that's applied

1 in the context of a so-called maximizer or
2 accumulator program like SaveOn.

3 So what that would lead to, your Honor,
4 if there were to be some expansion of benefits
5 investigations, would be, essentially, meaningless
6 documents about, "Oh, this person is on Medicare. We
7 can't cover that." Things having nothing at all to
8 do with the scope of this case.

9 The other thing is, the questions that
10 Mr. Dunlap is raising, if he serves an interrogatory
11 on us that asks those questions, we'd be obliged to
12 answer those questions in a way that would be binding
13 as an admission on JJHCS.

14 To, you know, beat it back and forth in
15 discovery letters doesn't lead to that outcome.

16 JUDGE WOLFSON: What would that
17 discovery interrogatory look like?

18 MR. SANDICK: Sure.

19 It would be an interrogatory asking for
20 a statement of what the company's policy was on the
21 issue of enforcement of the terms and conditions.

22 It could ask for --

23 JUDGE WOLFSON: And then they're going
24 to ask for all the documents that support what that
25 policy is and explain that policy and discuss the

1 policy.

2 MR. SANDICK: And we produced those.

3 JUDGE WOLFSON: There will be a document
4 request.

5 MR. SANDICK: As to "other offer," we
6 produced those documents already.

7 JUDGE WOLFSON: I'm not so limiting it
8 at this point.

9 MR. SANDICK: So, in any event, the
10 point I'm making is that, the subject of benefits
11 investigation is, unless it has something to do with
12 SaveOn, or maximizer, or accumulator programs, is
13 really just completely irrelevant to this case, and
14 it's going to lead to the production of documents
15 that talk about issues that have nothing to do with
16 the "other offer" term, nothing to do with SaveOn,
17 that just simply show that, you know, there are a
18 host of different eligibility requirements, and can
19 see this patient passing the test, this patient not
20 passing the test, but none of it relating to SaveOn,
21 none of it relating to maximizer or accumulator
22 programs, other than from the time period of 2022 to
23 the present, which we're already engaged in producing
24 documents for.

25 JUDGE WOLFSON: I think that -- and I

1 know that Judge Waldor would constantly say go meet
2 and confer, but I hate kicking the can down the road
3 and keep doing this, but I'm prepared to do it or
4 discuss it with you now, but I think you need to
5 narrow your request. I believe we got to the crux of
6 it a moment ago, which is, I believe you're entitled
7 to documents that show what policies they had with
8 regard to enforcement of eligibility criteria beyond
9 "other offer."

10 They need a comparison here to what were
11 your policies.

12 Those documents I believe would be
13 relevant.

14 It doesn't mean, therefore, and now we
15 eliminate the burden of going through every time you
16 actually took an individual's eligibility criteria
17 and looked at it.

18 I think let's start with documents that
19 reflect what their policies were and anything that
20 reflects how they would go about enforcing it or
21 instructions given to enforce it, and it will also
22 identify, therefore, for you what areas that they
23 thought were important to enforce.

24 That is of a more general nature.

25 You said they could ask an interrogatory

1 as to that. The document request is going to follow,
2 so I'm saying go ahead with the document request
3 right now. And it won't be involved with the
4 individual benefits investigations.

5 MR. SANDICK: So what your Honor is
6 proposing is something limited, essentially, to
7 policy or discussion of policy.

8 My concern is that it really should be
9 tied to "other offer" because once it moves into
10 things like discount, or free trial, or coupon, the
11 burden escalates dramatically.

12 We're talking about the review of
13 perhaps a quarter of a million documents. And we
14 told them this.

15 We haven't failed to engage them in meet
16 and confer. I'm happy to relate the history of that,
17 your Honor, if you would like to hear it. But we
18 have tried throughout to engage them in meet and
19 confer and for months the only position they took
20 was, these are our terms, you need to run them all.
21 Even for two months after Judge Waldor told them to
22 narrow their search terms, told them in court, told
23 them in a written order. They did not even provide
24 us with narrow search terms, let alone narrowing the
25 request, which is what her order said, that they're

1 going too far, they're taking extreme positions.

2 JUDGE WOLFSON: I read every single
3 transcript, not just the October one.

4 MR. SANDICK: Yes.

5 It was in March too.

6 JUDGE WOLFSON: Okay.

7 But you understand what I am saying is
8 relevant. I appreciate we don't want every little
9 document every time they discuss a discount.

10 When you're talking about policies and
11 discussions with regard to enforcing those policies,
12 no, I don't believe that we're talking about millions
13 of documents.

14 So come up with better. I'm not going
15 to create them for you, I mean, I have given general
16 categories about this. You know, from my
17 perspective, the world has become search terms. Not
18 how I grew up, or when I was a Magistrate judge, we
19 didn't have search terms. Okay? You made a document
20 request and everybody understood what it meant and go
21 find them, wherever they are. Now everyone needs to
22 define custodians and search terms to make sure that
23 you have done it a certain way.

24 I have given you what the subject matter
25 is.

1 So you think you need search terms to do
2 it, talk about what they are.

3 MR. DUNLAP: Your Honor, can I ask a
4 clarifying question?

5 JUDGE WOLFSON: Yes, go ahead.

6 MR. DUNLAP: So you said that policies
7 regarding enforcement would be relevant. I've heard
8 my friend on the other side say he thinks enforcement
9 is only relevant as to "other offer."

10 JUDGE WOLFSON: I already said no.

11 MR. DUNLAP: I just wanted to clarify it
12 goes to other eligibility criteria as well.

13 Now, we still had -- within the request
14 for this 2016 to 2022 time period, part of our
15 request was also about their understanding and
16 meaning of things like coupon or discount or other
17 terms as well, which I don't believe your Honor
18 addressed in talking about the enforcement side of
19 the request.

20 So we would ask that whatever they do in
21 terms of running additional search terms, and we're
22 glad to continue meeting and conferring with them
23 about that, that there be an understanding that --
24 their understanding, their enforcement -- the meaning
25 of the other terms in that clause, coupon, discount

1 and the others, is also relevant and something they
2 look for.

3 MR. SANDICK: Your Honor, that's really
4 where the heart of the burden comes in. If they're
5 asking for every time that someone at JJHCS talks
6 about the word discount in the context of Janssen,
7 you can just imagine the burden that that will
8 create.

9 JUDGE WOLFSON: I don't want it that
10 broad, I agree. So we have to figure out a way to
11 narrow that because, yes, we don't want to bring in
12 things that are not going to be relevant.

13 So you're going to go back and work as
14 to how to narrow this with the understanding of, I
15 appreciate your argument is, we want to see how they
16 define these terms or interpret them and then use
17 them.

18 They've already conceded, however, that
19 SaveOn doesn't fall within any of those terms, they
20 only fall within the "other offer."

21 So I understand -- what I'm trying to
22 figure out is what more that's relevant about
23 understanding how they interpreted coupon, rebate,
24 discount is important to your case?

25 MR. DUNLAP: Sure.

1 So, as you said, the "other offer"
2 provision is a big piece of this case. It's a big
3 piece of the tortious interference claim. What did
4 "other offer" mean?

5 They say it applies to SaveOn services.
6 We say it does not apply to SaveOn services.

7 So to the extent that the court finds
8 that term ambiguous, one of the standard tools of
9 construction that it may use is looking at the terms
10 that go along with it in that same clause.

11 And I'm sure you are familiar with that
12 doctrine.

13 JUDGE WOLFSON: Absolutely.

14 MR. DUNLAP: So in order to determine
15 whether or not other offer -- the scope of other
16 offer is like a coupon or discount savings card we
17 need to understand what they believe a coupon or
18 discount savings card meant.

19 So we don't want every time anyone at
20 Johnson & Johnson used the word "coupon." What we
21 want to understand is, what did they believe, what
22 did they understand those terms within the context of
23 the general terms and conditions meant.

24 We believe that that is relevant. And
25 if you can give us guidance that that is relevant,

1 then we're glad to go back and continue meeting and
2 conferring with them on the search terms that are
3 designed to try and capture that.

4 MR. SANDICK: Your Honor, Mr. Dunlap
5 said a moment ago words to the effect of, we're not
6 looking for every time that somebody mentioned
7 discount or coupon, but the search terms that they
8 proposed even after Judge Waldor ordered them to
9 narrow their request are exactly what Mr. Dunlap just
10 said --

11 JUDGE WOLFSON: It's not going to
12 happen.

13 MR. SANDICK: Okay.

14 Because I think what he is saying is,
15 I'd like guidance. What I hear him saying is, he
16 would like you to say something that contradicts what
17 you said a moment ago. And we'd ask you not to do
18 that.

19 JUDGE WOLFSON: I got it.

20 MR. DUNLAP: That is not what I said or
21 I asked for.

22 JUDGE WOLFSON: We have what the
23 position is. I appreciate your argument.

24 And this is also going again back to
25 interpreting what the terms and conditions mean. And

1 I do appreciate that one of the arguments is going to
2 be, if you look at this entire phrase, and the things
3 that they really wanted to exclude, it gives meaning
4 to "other offer."

5 I know that is your argument, and I
6 understand that, which is why I would permit the
7 discovery on what does that mean.

8 That is different than enforcement.

9 We have gone backwards now. We are
10 going back to terms and conditions and what this
11 sentence means. I was on enforcement for a moment.
12 We'll return to enforcement. But, yes, I do. But
13 we're not going to have search terms that you're
14 right that every time that phrase comes up it gets
15 produced. It has to in some way be cabined to
16 capture what we are talking about, which is, what was
17 the understanding of those terms when they were
18 placed into these various agreements, plans,
19 whatever, and documents that reflect what that
20 understanding was and the intent of it.

21 MR. SANDICK: And we've already produced
22 documents to the extent they exist, to the extent
23 that we have non-privileged documents, from the
24 period of 2016 to 2022. We've already produced those
25 documents.

1 JUDGE WOLFSON: And I guess you're going
2 to have a privilege log.

3 MR. SANDICK: We do have a privilege
4 log. We're going to meet and confer on that subject.
5 I'm sure that will go on too.

6 JUDGE WOLFSON: I would like to go back
7 now to enforcement.

8 It's of a similar nature, which is that
9 the idea is, here, you want to know how vigilant were
10 they about enforcing these various terms that appear
11 here, or whatever the eligibility criteria are.

12 You don't need the underlying
13 investigations on all the other terms. Right? It's
14 really to figure out how they decided, one, if there
15 are documents that reflect, we are going to
16 aggressively pursue these terms. You know, people
17 that get the coupons or whatever. And do you
18 actually go about enforcing. You know, because they
19 are going to make an argument you sat back on this
20 one. Do you sit back on others too, is this kind of
21 what you do, or do you aggressively enforce that and
22 you didn't come about doing this for a few years.

23 These are, again, of a more general
24 nature than every individual one that they do.

25 So, go to work on figuring out -- I

1 would do it in general categories like I did in the
2 old days, but you'll come up with search terms
3 instead that create all these issues for us -- work
4 on those search terms that capture what I just said.

5 Okay?

6 MR. DUNLAP: Yes, your Honor.

7 MR. SANDICK: Okay.

8 JUDGE WOLFSON: Next.

9 So then, I guess, part of this problem
10 has been we're still talking about the understanding
11 of what "other offer" means, how that overlaps with
12 the specific categories. We're back to all these
13 search terms. And I think you found 188,000
14 documents on using certain of the search terms they
15 gave you, and you say, hey, that is too burdensome.

16 MR. SANDICK: Yes.

17 And after Judge Waldor asked them to
18 narrow their requests, they never narrowed their
19 requests, but they gave us somewhat narrower terms.

20 From an apples to apples comparison, if
21 we look at the same time period and the same
22 custodians, they went from about 180,000 to about
23 150,000.

24 The terms themselves are only slightly
25 narrowed. The nature of the requests are not

1 narrowed at all. In our view, they have not complied
2 with what Judge Waldor asked them to do.

3 JUDGE WOLFSON: I could sit here and we
4 could go through search terms and say, how can we
5 better do this, but the goal here is to come up with
6 the documents you need, and not more than you need,
7 which is going to be of no help for you either to
8 review.

9 So -- I hate to send you back to meet
10 and confer.

11 I've given you guidance on what
12 categories or subjects I think are relevant. Based
13 on that, maybe you can do search terms that are honed
14 better to that.

15 But I want this meet and confer to
16 happen within the next week. We're back and forth
17 too much. And to the extent you can't agree, I'll do
18 a Zoom with you. But we need to move this ahead.
19 Keeping in mind that I've defined for you areas that
20 I think are relevant.

21 Okay?

22 MR. DUNLAP: We understand, your Honor,
23 yes.

24 Thank you.

25 JUDGE WOLFSON: Okay, good.

1 Now, I guess in January of 2022 there
2 were new terms and conditions for Stelara and Tremfya
3 medications that specifically excluded members of the
4 Defendant plans from CarePath.

5 I know SaveOn has argued that Plaintiff
6 didn't implement new terms and conditions for other
7 drugs. Kind of a selective enforcement argument
8 maybe being made here. And I guess you've asked for
9 documents reflecting the decision to revise those
10 terms and conditions for those two drugs, how it's
11 being enforced and implemented.

12 Okay.

13 I think the argument here is that there
14 have been -- the production is deficient, restrictive
15 search terms were used, and custodians, such as
16 Jennifer De Camara and Harman Grossman and Savaria
17 Harris were not added because they are attorneys, but
18 I don't think there has been a privilege log.

19 MR. SANDICK: So a privilege log has
20 been sent. They sent us a letter critiquing some of
21 it and we are going to this week, by the end of
22 Friday, send them back a response. They identified
23 several hundred documents, we've reviewed every one,
24 and we have a response planned for them by Friday
25 close of business, so Friday the end of the day.

1 JUDGE WOLFSON: And then if there are
2 still documents upon which there is disagreement, I'm
3 going to do an in camera review of them.

4 MR. DUNLAP: Yes, your Honor.

5 MR. SANDICK: That is something we're
6 working through, and, of course, we'll bring it to
7 your Honor.

8 On the subject, your Honor, of the
9 Stelara and Tremfya terms and conditions, this is
10 really related to the CAP issue that was the subject
11 of movement at the October conference. So we have
12 already produced documents that relate to this issue,
13 documents that show the changes in the Tremfya terms
14 and conditions, documents that show how the CAP
15 program operated, and that is going to be updated
16 right through, as Judge Waldor said, through
17 November 7.

18 So I think this issue is one that I
19 think has been kind of overtaken by events, so to
20 speak, since the letters in August.

21 MR. DUNLAP: I agree to some extent.

22 Part of the original dispute was were
23 they going to search past July of 2022. Judge Waldor
24 sort of took that out of everyone's hands by saying
25 go through November, and we understand they're going

1 to be running all their search terms, so that should
2 capture a lot of it. I think there are a few pieces
3 that still remain. One is the issue of these two
4 custodians who are attorneys but there is evidence
5 they worked in a business role at some point. So we
6 ask that they be added.

7 There are two additional points.

8 We had asked that they run --

9 JUDGE WOLFSON: Well, I'm assuming, by
10 what I was just asking about, because we always know,
11 in-house attorneys in particular, we have to decide
12 are they acting in their role as an attorney or in a
13 business sense?

14 I am assuming this is part of the
15 privilege log. You did go through their documents.

16 MR. DUNLAP: No.

17 MR. SANDICK: So, your Honor, we have
18 not added these people as custodians.

19 Mr. Dunlap is wrong. They play no
20 business role. They are lawyers. They are not,
21 let's say, JD's doing business, or former lawyers
22 doing business. They work in a legal capacity as
23 lawyers for JJHCS. So their documents do come up
24 from time to time because they will be in
25 communication with the people who are custodians in

1 this case, the business people, and when they are,
2 those documents will be withheld or redacted for
3 privilege as appropriate.

4 On very rare occasions they may be in
5 communications with both the business people and
6 people external to JJHCS, and in some of those cases
7 the documents are produced because, obviously, if a
8 lawyer is talking to a complete stranger, that might
9 not be privileged.

10 We have not added them as custodians.
11 In other words, we have not undertaken specifically
12 to review all of the lawyers' files. And let me tell
13 you why. It's because, given that they are attorneys
14 working as attorneys, if we are reviewing all of
15 their documents, all we are going to wind up doing is
16 creating a massive privilege log problem for us, and
17 in the end I suppose for them, because their files
18 are going to be, if not exclusively, overwhelmingly
19 privileged, because what they do when they talk to
20 people within the company is going to be conveying
21 legal advice or receiving requests for legal advice.

22 To the extent that they have
23 communications with business people and those are not
24 privileged, those would be produced.

25 JUDGE WOLFSON: How do you search for

1 those, though? If you're saying you're not doing a
2 search for them as a custodian, how are you
3 determining which I falls in which category?

4 MR. SANDICK: Sure.

5 Let's take an example.

6 You have a custodian at the company, an
7 employee named Heith Jeffcoat. If he has e-mails
8 with Savaria Harris, who is the lawyer for JJHCS, we
9 may see those e-mails when we review Heith Jeffcoat's
10 files, and to the extent those documents are
11 privileged, they will be marked privilege, they will
12 be put on the log, they will either be withheld or
13 redacted, depending on the nature of the privilege
14 assertion.

15 What we're not doing is specifically
16 collecting all of Ms. Harris' e-mails and looking at
17 those separately.

18 JUDGE WOLFSON: How about though -- we
19 use Ms. Harris as an example. She's having
20 communications with Trial Card, she's having
21 communications with a third party outside that it
22 doesn't have a business person on it, so you're not
23 capturing it there, but if you're not doing a search
24 on her, you're not capturing Trial Card because
25 they're not part of the search.

1 MR. SANDICK: So Trial Card is producing
2 documents, actually, they're producing custodial
3 documents from the most important people at Trial
4 Card. There has been a separate third-party subpoena
5 back and forth between Trial Card and SaveOn. But
6 Trial Card is producing documents, number one.

7 JUDGE WOLFSON: I only gave that as an
8 example.

9 Any third party on the outside that she
10 is having a communication with, if you're not doing a
11 search on her, you're not going to capture any of
12 those communications that would not be protected by
13 the privilege.

14 MR. SANDICK: Well, what we have seen is
15 that her communications will inevitably have business
16 people on them. She is not doing business work on
17 her own. She is the legal advisor to JJHCS. So to
18 the extent that JJHCS is doing business-related work,
19 that is going to be conducted by the business
20 personnel. And if Ms. Harris is copied on an e-mail,
21 and the e-mail is not a request for legal advice, or
22 the rendering of legal advice, then there will be no
23 privilege assertion. That is how they have gotten
24 some documents that Ms. Harris is on. Because not
25 every communication that she is copied on is

1 necessarily going to be privileged.

2 But the issue is this: Should we have
3 to undertake separately the burden of reviewing
4 attorney e-mails, which is very unusual in this
5 context. It's common when the attorney is not really
6 functioning as an attorney, when the attorney is
7 really -- they have a JD, but they're doing business
8 work.

9 That is not the case here. These are
10 in-house lawyers for J&J.

11 So if we are required to review their
12 documents separate from reviewing the business
13 people's documents, what we're going to do, you know,
14 we'll have someone sitting at a computer, privilege,
15 privilege, privilege, and at the end they will get
16 thousands more entries.

17 The cost of that to us is significant.
18 The benefit to them will be negligible or
19 non-existent, because these are people engaged in
20 legal work. They're not doing business work for the
21 company. They're lawyers practicing as lawyers.

22 MR. DUNLAP: Your Honor, may I respond
23 briefly to that?

24 JUDGE WOLFSON: Yes.

25 MR. DUNLAP: So since the letter went

1 out we have seen documents indicating that a couple
2 of these folks did have communications with third
3 parties, not just Trial Card, but another J&J
4 consultant called Archbow.

5 Where I think your Honor is going, and
6 this might be something we can discuss, is something
7 where they don't have to review, in the first
8 instance at least, all the internal e-mails, which
9 really seems to be Mr. Sandick's concern, but start
10 with the production of their communications with
11 third parties outside of JJHCS limited by search
12 terms, specifically folks like Archbow or Trial Card
13 or the other consultants that we know were involved
14 in discussions like this. That might be a place to
15 start.

16 I just want to note that we have dropped
17 our request for the one in-house lawyer who
18 apparently functioned in a litigation function.

19 JUDGE WOLFSON: Mr. Grossman?

20 MR. DUNLAP: Mr. Grossman, yes.

21 So we're only down to these other two.
22 So we would think that that might be a place to
23 start.

24 MR. SANDICK: Your Honor, even on the
25 issue of external communications there is, of course,

1 a privilege doctrine that when someone working
2 outside of the company is either serving,
3 essentially, as a functional employee of the company
4 because of the nature of the work that they're doing,
5 or is part of a discussion in anticipation of
6 litigation, those e-mails involving the lawyer will
7 also be protected.

8 So even the screen that Mr. Dunlap is
9 proposing is a very -- it's a very poor tool for
10 limiting the burden on us.

11 What they are getting is, to the extent
12 that Ms. Harris is on communications with external
13 parties, for instance, let's say -- going to
14 Mr. Jeffcoat again, to use him as an example, he
15 wants to enter into some kind of a contract to help
16 manage the CarePath program, he has back and forth
17 with his business counterpart at this other company,
18 at some point he will copy Ms. Harris on that e-mail,
19 and then there will be some external discussions.
20 But those aren't discussions that drop the business
21 people. The business people are always involved.
22 Ms. Harris is just there maybe to look at a contract
23 or provide legal advice offline to Mr. Jeffcoat about
24 the nature of the business that is being proposed.

25 So we do object to the inclusion of

1 lawyer custodians when we know that these are lawyers
2 doing legal work, not business work.

3 JUDGE WOLFSON: I want to go back to the
4 limitation that Mr. Dunlap raised, which is as to
5 third parties.

6 Address that.

7 I know you said they subpoenaed Trial
8 Card.

9 That doesn't relieve you.

10 As you know, more than one party could
11 have a document, and sometimes one of the parties
12 doesn't maintain the documents properly. It doesn't
13 relieve your obligation to produce them as well.

14 So I want to address communications with
15 third parties.

16 And I know you said, well, there could
17 be an occasion where she is having a communication
18 with a third party, but we still believe privilege
19 applies. And that's when you put it on a privilege
20 log though. It doesn't mean you produce it, it ends
21 up on a privilege log.

22 What is the problem with the third-party
23 communications?

24 MR. SANDICK: So third-party
25 communication issue, number one, they are going to

1 have -- just saying based on our investigation for a
2 long time in this matter -- Ms. Harris'
3 communications with third parties when she has been
4 copied on an e-mail, or is the recipient of an
5 e-mail, they are going to be business people who are
6 already custodians in this case. So we are doing
7 this work for no additional advantage. We're going
8 to be reviewing documents that are already in the
9 files of the business people at JJHCS.

10 JUDGE WOLFSON: I hope.

11 MR. SANDICK: Well, or at least
12 overwhelmingly so.

13 I can't sit here and say that there
14 might not be one document that falls outside of what
15 I'm describing, but, again, the question is, what is
16 reasonable and proportional in this context?

17 They have 16 business unit custodians.
18 They are getting some more as a result of the Court's
19 order. So they will be getting more production over
20 the next month.

21 But the question is whether we should be
22 required to review all of the in-house lawyer e-mails
23 for the narrow purpose of seeing if maybe once in a
24 while she has done this.

25 JUDGE WOLFSON: I hope not all e-mails.

1 What are the search terms you're using?

2 MR. DUNLAP: Your Honor, may I respond
3 to that?

4 JUDGE WOLFSON: Yes.

5 MR. DUNLAP: It's not all of their
6 in-house lawyers. It's not all of their e-mails.
7 It's just the third-party communications at this
8 point.

9 JUDGE WOLFSON: Third-party
10 communications on what subject?

11 MR. DUNLAP: Well, we will limit it to
12 search terms.

13 The reason we're interested in these
14 folks specifically is because the other side has
15 indicated they were involved in revising the Stelara
16 and Tremfya search terms. So communications they had
17 about the meaning of those terms outside of JJHCS
18 would be very relevant to us.

19 And Mr. Sandick said, well, you know, a
20 lot of times when they communicate outside, they have
21 copied existing custodians.

22 Well, if they have, then those documents
23 will be de-dupped, they will be taken out, they have
24 already been identified for review if they hit on our
25 search terms.

1 So we think at least in the first
2 instance they should gather the documents, we can
3 talk about tailored search terms for those
4 custodians, and then give us the numbers, and then
5 they can make a burden argument that is based on
6 actual numbers.

7 JUDGE WOLFSON: All right, this is where
8 we're going on this.

9 It's only as to two attorneys, it's
10 Jennifer De Camara and Savaria Harris, correct?

11 MR. DUNLAP: Yes.

12 JUDGE WOLFSON: Okay.

13 As to them we're only looking at
14 communications to third parties on narrowly-defined
15 search terms, which I don't know what they are yet.

16 MR. DUNLAP: We're glad to meet and
17 confer.

18 JUDGE WOLFSON: You will.

19 MR. SANDICK: And one other thing that
20 is important here, this is only terms and conditions
21 related discovery, that's what their request was, not
22 the whole world of SaveOn.

23 JUDGE WOLFSON: Yes.

24 MR. SANDICK: So communications with
25 third parties relating to terms and conditions is

1 what your Honor is asking for?

2 JUDGE WOLFSON: And I think this was
3 really within the Stelara and Tremfya area.

4 MR. SANDICK: Right.

5 MR. DUNLAP: Yes, that's why we were
6 interested in them.

7 I will say, if they mention SaveOn to a
8 third party, we do want to know about that.

9 MR. SANDICK: What is the entitlement to
10 that?

11 MR. DUNLAP: Because it goes to J&J's
12 awareness of SaveOn and their responses to SaveOn.

13 MR. SANDICK: This has never been
14 briefed, your Honor.

15 JUDGE WOLFSON: Yeah, I'm not addressing
16 that today. If you want to address that with them,
17 you can address that with them.

18 MR. DUNLAP: I think there are two other
19 issues that I think linger from the later time
20 period. The custodians was one of the three.

21 So in our original request we had ask
22 that they run I think five search terms during this
23 later time period. Four of those they had already
24 agreed to run for the earlier time period, but there
25 is one search term that we had asked them to run for

1 the 2022 time period forward that was not caught up
2 by Judge Waldor's order, and it's my understanding
3 that they're declining to run it, and it's one that
4 we think is very important, and it is a term that
5 asks for the term EI, which is benefits
6 investigations, which is what Mr. Sandick discussed
7 earlier, within the same document as Stelara and
8 Tremfya.

9 So you may have recalled him saying that
10 through Trial Card they are producing information or
11 copies of benefits investigations they conducted for
12 Stelara and Tremfya because at that point they
13 specifically started asking to look for whether
14 people were on SaveOn advised plans or not.

15 So we want documents relating to those
16 investigations, which is why we asked them to include
17 the search term.

18 I believe they're declining to run it
19 and we think that they should.

20 MR. SANDICK: Your Honor, they are going
21 to be getting benefits investigations documents
22 relating to Stelara and Tremfya as a result of Judge
23 Waldor's order. What they need beyond that I do not
24 perceive it or understand it, but maybe they should
25 wait to see what our production is.

1 JUDGE WOLFSON: See what their
2 production is, and if there is still an issue, I'll
3 resolve it.

4 MR. DUNLAP: Glad to reserve that.

5 There is just one other issue that I
6 believe is still out there, which is within the
7 documents that they reviewed for this later period,
8 2022 through November of last year, we believe that
9 they should be looking for and producing documents
10 identified by the search terms that go to their
11 enforcement of the Stelara and Tremfya conditions.

12 I believe there was an indication in
13 some of their correspondence that they weren't going
14 to do that. We don't think there is a basis for
15 that. We think that if there is a document
16 identified by the search terms and it goes to
17 enforcement of these terms, we need to see it,
18 because we have seen some documents from that time
19 period indicating [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24 We just want to make sure that they're
25 producing documents relating to the enforcement of

1 those terms.

2 MR. SANDICK: The first time that I ever
3 heard this issue raised was right now.

4 I have in front of me the search
5 terms that they proposed on terms and conditions. I
6 don't know what he's saying, how it connects to any
7 of this. I'm just totally surprised by what he's
8 proposing.

9 JUDGE WOLFSON: Then talk after we're
10 done.

11 MR. DUNLAP: Sure.

12 We have met and conferred about this,
13 but we'll do it again.

14 JUDGE WOLFSON: Okay.

15 Let's turn to the financial documents.
16 I think that's the next thing.

17 Now, what I understand is Plaintiff has
18 produced documents that bear on the following: The
19 extent of the harm that SaveOn has caused J&J during
20 the relevant time period; and then a number of other
21 things.

22 What are those documents? That is a
23 general description. What does that mean? What are
24 you producing to them?

25 MR. SANDICK: So what we've produced to

1 them is [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED] We have, of course,
4 agreed to update that through the present.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 What they are asking for is -- going
9 back at one point at least to 2009 -- all documents
10 and communications about those budgets. And they've
11 offered no rational for why they need all documents
12 and communications about the budget.

13 So this is one where we do object on the
14 basis of relevance.

15 What matters is what budget was set; how
16 much was paid.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]. So we've already
20 produced substantial budget data.

21 What we haven't produced is all
22 communications ever about how much money was going to
23 be spent. We don't think that is necessary for the
24 case. It creates burden for no benefit.

25 JUDGE WOLFSON: Okay.

1 MR. DUNLAP: So, they bring a GBL claim
2 against us alleging that we caused public harm.

3 One of the things that they allege that
4 we do is that we threaten the financial viability of
5 CarePath.

6 That is right in their complaint.

7 We don't think that SaveOn threatens the
8 financial viability of CarePath, number one.

9 And number two, we don't think that this
10 is a public harm, because CarePath is actually the
11 marketing program. It is designed to encourage
12 patients to buy Johnson & Johnson's drugs instead to
13 competitors' drugs.

14 And there is case law saying that if
15 what you're really doing is impacting somebody's
16 business, that is not a harm recognizable under the
17 general business law, which is about protecting the
18 public.

19 We need documents showing who sets the
20 budget, why is it set, where do the funds come from.

21 JJHCS is a division of Johnson & Johnson
22 that as far as we know doesn't make any products or
23 offer any services outside of Johnson & Johnson.
24 It's an administrative entity that serves other J&J
25 entities.

1 If, in fact, the budget for CarePath is
2 part of the marketing budget, if, in fact, it is not
3 part of some sort of public or charitable effort,
4 that goes a long way in showing that this was a
5 marketing program.

6 If, in fact, we can show that the
7 budget -- the factors that go into setting the budget
8 are not actually impacted by what SaveOn is doing and
9 they're going to keep funding this anyway, that could
10 go a long way in showing that we don't actually
11 threaten their financial viability.

12 What they have produced are a limited
13 number of documents showing amounts paid out under
14 the CarePath program and some budgeting documents,
15 but they're just numbers, they don't show us why the
16 budgets were set, we don't know who sets the budgets,
17 there is no documents indicating any of that.

18 We're not asking for every single
19 communication under the sun about this. It's a
20 question of whether this is relevant. And we think
21 it's squarely relevant.

22 And if we can establish that, then we're
23 glad to work on determining who the right custodians
24 are and the search terms and all of that.

25 JUDGE WOLFSON: Let me first stop you.

1 Judge Vazquez talked about public harm
2 in his opinion, and the way he analyzed it was -- he
3 said that "Plaintiffs plausibly allege at least two
4 deceptions as to consumers: One, enlisting
5 pharmacies to reject Plaintiffs' claims for their
6 prescriptions at the point of sale; and two, failing
7 to inform patients that by enrolling in SaveOn SP can
8 breach the CarePath terms and conditions."

9 The things you're looking to do don't
10 answer those public harm questions.

11 So I want to get away from that for a
12 moment.

13 I think really the focus here is on the
14 harm to the Plaintiff itself and how the discovery
15 relates to that.

16 So let's focus on that.

17 I know that one of the arguments is the
18 viability, economic viability of the program.

19 Okay.

20 Yeah. Documents that go to that are
21 important.

22 Could be communications go to it.

23 I think at this point what you've
24 done -- I don't know if you have produced any
25 communications. You have given budgets. You have

1 given I think you know -- let's see -- data.

2 What have you given?

3 MR. SANDICK: We have given them
4 documents about how co-pay assistance is determined.
5 We answered interrogatory on this subject.

6 They said we don't know who makes the
7 decisions.

8 Literally that exact question of who
9 makes the decisions was the subject of our
10 interrogatory response that we provided this summer
11 after Judge Waldor told us that she wanted us to
12 broaden our response on that.

13 JUDGE WOLFSON: Okay.

14 MR. SANDICK: Patient level data to show
15 every patient enrolled, dates of enrollment, the
16 amounts of assistance, the drugs they took, all of
17 this for a six-and-a-half year period.

18 You know, why would they need
19 communications within various parts of the J&J
20 company, not just JJHCS, but other components of the
21 company, why would they need that to figure out what
22 damages are? There is no need for that.

23 JUDGE WOLFSON: I will tell you, I think
24 that your requests in the financial area are over
25 broad.

1 There may be areas that are pertinent,
2 and I want to define what they are.

3 I think to the extent that the harm
4 being alleged is a financial harm to the CarePath
5 program and, as you call it, the viability of the
6 program, there could be communications that could be
7 relevant. It's not just what the budget is, but if
8 people are saying, you know, this is going to hurt
9 our bottom line, we're going to be okay, but it's
10 going to hurt our bottom line, that could go to your
11 viability argument.

12 There certainly could be communications.

13 So what I would like is a better or more
14 narrow request for what those communications are as
15 opposed to the entire world.

16 Frankly, the success of these drugs is
17 really not the issue for me or for this case. These
18 are about programs.

19 I know you say this is really a
20 marketing tool, it's not to help the patient.

21 Maybe.

22 Maybe they're not such good guys. I
23 don't know, that is not my determination today. That
24 is not what this is about.

25 They created a program. They are, you

1 know, entitled to enforce the program how they'd
2 like.

3 And this is not a determination of, as I
4 said, are they benevolent here in doing something
5 great or not. That is not the inquiry. It's an
6 economic harm that is being alleged.

7 Right?

8 MR. DUNLAP: Your Honor, may I respond
9 to that?

10 JUDGE WOLFSON: Yeah.

11 MR. DUNLAP: So I believe you said
12 that -- and you cited the Court's opinion in talking
13 about the harm and pointing to things like failing to
14 say that signing up for whatever it is allegedly
15 breaches the contract.

16 I just want to clarify the elements of
17 the GBL claim.

18 I believe when Judge Vazquez was talking
19 about those things he was talking about the
20 underlying acts.

21 The elements are, you have to have an
22 act that is consumer facing, public facing, that is
23 deceptive or missing.

24 That is one.

25 Two, that act has to cause some sort of

1 harm to the public.

2 And then third, that act also has to
3 cause some sort of harm to the Plaintiff bringing the
4 suit.

5 So when he was talking about failing to
6 tell patients that they breached their contract, he
7 was talking about the deceptive act, one of the
8 alleged deceptive acts. He wasn't talking about the
9 harm that they allege.

10 The harm that they allege, if you look
11 at the complaint --

12 JUDGE WOLFSON: Yeah, but I'm looking at
13 his opinion right here.

14 You're right, he is talking about the
15 deception.

16 But turning to Defendant's argument.

17 "The Court first agrees with Plaintiff
18 that a plausible belief that Defendant deceived
19 participants already enrolled in CarePath.
20 Similarly, the Court disagrees with Defendant's
21 reading that the statute requires a threat to the
22 health or safety of the public at large. While
23 Plaintiff must plausibly allege some harm to the
24 public at large, while a threat to the health or
25 safety of the public is certainly a way to meet this

1 obligation, the statute is not related to health and
2 safety harms," and then it goes on to say what he
3 says.

4 Now, you may think that his opinion
5 didn't adequately address harm, but we have what he
6 did. And, you know, it's not a lengthy opinion, and,
7 you know, but it is what is, and that is how he did
8 it.

9 But I want to get to, I think that -- I
10 believe that this financial information overall, your
11 request 28, 29, and I think 30, are over broad, and I
12 want to talk about what narrow requests could be
13 relevant to your claim.

14 MR. DUNLAP: Your Honor, I don't want to
15 belabor this, but just in response to what you said,
16 which is, what the Court did was it disagreed with
17 our basis to dismiss the complaint in terms of
18 allegations of harm to the public. So as I
19 understand it, he allowed J&J's allegations to go
20 through to discovery.

21 Those allegations of harm, paragraph 114
22 of their complaint, says SaveOn causes damage to the
23 public, including patients, through a series of
24 things, one of which is jeopardizing the viability of
25 patient assistance programs like CarePath by making

1 them prohibitively expensive.

2 JUDGE WOLFSON: But that is the point.

3 I am saying discovery about the
4 viability of the program is fine. That is the
5 limitation. And so that's what I'm focused on. But
6 that's why I'm saying, things that you're saying
7 about, oh, but let's see how much money J&J makes on
8 Stelara, let's see how much money J&J makes overall,
9 is really not the issue. I want to focus on the
10 program itself.

11 MR. SANDICK: And, your Honor, just to
12 clarify the subject of the public harm that we're
13 alleging.

14 The public harm in this case is not even
15 exclusively or primarily this viability issue, what
16 it is, and as we have seen in discovery, is across
17 the country patients who come into contact with the
18 SaveOn program find their lives made much worse by
19 it. [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 So the idea that somehow this will be a
2 case primarily about the viability of SaveOn, 349, as
3 I'm sure the Court knows, is a statute about consumer
4 harm, and consumer fraud, and the consumers have been
5 very badly harmed.

6 That evidence will be what this trial is
7 about.

8 JUDGE WOLFSON: That is fine, but I want
9 to now get to the other aspect, which was what his
10 requests were about, which is the viability of
11 CarePath and what documents are necessary to talk
12 about that economic harm that challenged the
13 viability of CarePath. And let's come up with
14 requests that are more narrowly tailored to that.

15 I don't think getting discovery on, you
16 know, gee, you're making -- you know, this is really
17 a marketing program, or, more broadly, J&J makes a
18 lot of money on these drugs.

19 Let's break it down.

20 So, with regard to CarePath
21 specifically, what do you think you're missing that
22 you need to give you the discovery you require to
23 show how this impacts the viability of CarePath.

24 MR. DUNLAP: We need to understand how
25 Johnson & Johnson sets the CarePath levels, how it

1 decides on the budget, where that is done, the
2 factors that go into it, and relevant communications
3 about that.

4 JUDGE WOLFSON: Okay.

5 Frankly, I find that okay.

6 So that's where we are.

7 Let's move onto the next.

8 J&J's return on investment from
9 CarePath.

10 MR. DUNLAP: I'm glad to speak about it.

11 Return on investment documents we think
12 goes to fundamental issues of injury and damages.

13 Fundamental issues of injury and
14 damages.

15 Their allegation is that somehow what we
16 do causes them to pay out more in CarePath, in these
17 co-pay assistance funds, and they say, we don't want
18 to be paying this much money, it costs us however
19 much it costs us, that is our injury, and those are
20 our damages. We will figure that out.

21 Part of what SaveOn does on behalf of
22 its plan clients is it helps more people enroll in
23 CarePath and take more Janssen drugs.

24 So we believe that if you look at the
25 additional patients who have signed up for CarePath,

1 the additional patients who have bought more Janssen
2 drugs as a result of what we are doing on behalf of
3 our clients, that Johnson & Johnson has made much
4 more money in terms of drug sales, new drug sales, it
5 otherwise would not have made than in the money that
6 it pays out.

7 Now, it has been well documented,
8 including congressional hearings, that a lot of drug
9 companies specifically monitor their return on
10 investment.

11 You can spend a little bit of money to
12 help patients take your drugs as opposed to a
13 competitors. You can sell many more of these drugs
14 that the commercial health plans then basically pay
15 for.

16 That's why they do this, it's part of
17 the purpose of the program, not to benefit the
18 public, but to make this amazing investment, this
19 amazing return for themselves.

20 So that goes to whether it's a public
21 harm.

22 But it also goes to the question of
23 injury and damages.

24 If we are signing more people up and
25 they are paying more in CarePath assistance funds,

1 but they're making much more in drug sales, we think
2 that offsets or eliminates their damages, and it
3 might offset or eliminate their entire injury.

4 These return on investment documents are
5 absolutely critical to us. We can talk about the
6 scope of how we get them, the type of data they
7 produce, the type of communication they produce, but
8 the subject of return on investment is critical to
9 our defenses on injury and damages, and it's relevant
10 to questions of public harm and GBL.

11 MR. SANDICK: Judge, I would like to
12 respond.

13 JUDGE WOLFSON: Sure.

14 MR. SANDICK: This argument is
15 essentially that if CarePath, you know, and Johnson &
16 Johnson are still able to make money despite the
17 looting of the program that his client has engaged
18 in, then, you know, it's okay. It's okay to steal
19 from someone, and to loot a program, so long as at
20 the end of the day they're still making money.

21 If this program was helping the
22 pharmaceutical manufacturers, as Mr. Dunlap suggests,
23 why have they gone through such extensive efforts to
24 hide their existence, to prevent us from knowing who
25 was in the program?

1 If these were something that, you know,
2 advanced the profitability of the CarePath program,
3 or of pharmaceutical industry generally, why are they
4 hiding this from everyone?

5 This is a made for litigation argument
6 to obtain documents that have nothing to do with the
7 case in an effort to shift the case from a fairly
8 specific question, do their efforts lead CarePath to
9 pay more money than it would pay in the absence of
10 CarePath, into a huge question about how much money
11 is J&J making on its drugs, can it afford to absorb
12 some losses here because they're generally a
13 profitable company, things that are just totally
14 irrelevant.

15 Also, just for a moment on the burden
16 issue.

17 The question of how much money does a
18 drug company make on a particular drug is not a
19 simple question, you know, residing in a couple of
20 paper files in someone's office. This is a massively
21 complicated question that goes to virtually every
22 corner of the entire J&J company to figure out, you
23 know, is a drug profitable relative to what? To
24 other investments? To other potential drugs?

25 It's an effort to place a huge burden on

1 us for no benefit in the lawsuit. It's totally
2 irrelevant to the lawsuit whether or not the whole
3 company of Johnson & Johnson makes more money or less
4 money.

5 The question is, are they inducing
6 people to breach the terms and conditions, the
7 patients, are they forcing them to do this in order
8 to get their medication, are they causing harm to
9 those patients, and does this lead to an increase in
10 the amount of co-pay support that we would pay absent
11 that?

12 They are reframing this to entities, by
13 the way, that are not part of this lawsuit.

14 JUDGE WOLFSON: Well, that's why I want
15 to ask a question.

16 May I stop you there for a minute?

17 MR. SANDICK: Sure.

18 JUDGE WOLFSON: I find this curious, and
19 I have been wondering about this as I've looked at
20 this case since the beginning, the only Plaintiff in
21 this case is JJHCS, not J&J. So the question is, you
22 have just defined, Mr. Sandick, that this is a very
23 narrow harm, narrow in the sense of to this one
24 subsidiary or affiliate that runs the CarePath
25 program.

1 You want to argument more broadly, it's
2 much more than that. J&J is making a lot of money.

3 So, first of all, who funds the CarePath
4 program?

5 MR. SANDICK: So -- I'm not actually
6 sure what the -- it's something within the Johnson &
7 Johnson family of companies, but I couldn't say
8 specifically. I think there are specific drugs that
9 fund -- essentially that fund their own co-pay
10 support, it's not decided in one person's office
11 sitting alone.

12 JUDGE WOLFSON: Okay.

13 So those decisions are made somewhere
14 else within corporate J&J perhaps, it's not limited
15 to this one entity who is the Plaintiff in the case,
16 but who may be the one administering it.

17 I understand your arguments, Mr. Dunlap.
18 I'm not buying it at the moment.

19 What I don't want to see happen too in
20 this case is that this becomes, essentially, J&J is a
21 big company that makes a lot of money. Don't cry for
22 them.

23 And I don't think, by the way, any juror
24 is going to believe that anyway, that you're doing
25 something that's greatly going to harm the overall

1 J&J company.

2 So that's why I'm trying to figure out,
3 if you're narrowing harm as to the CarePath program
4 itself that exists within this one entity.

5 MR. SANDICK: That is the case.

6 We are not, for example, this is not a
7 case about lost profits. This is not a case about
8 the harm, more broadly, to Johnson & Johnson. This
9 is a program that says, well, the program gets this
10 amount of money. As a result of SaveOn, they need to
11 spend this amount of money. And that delta is the
12 financial damage. And then the patient harm is what
13 we talked about before.

14 JUDGE WOLFSON: Yeah, that's what I'm
15 dealing with now on financials.

16 MR. DUNLAP: So I have to reiterate how
17 strongly we believe this is relevant and how
18 important we think these documents are. And, again,
19 we're glad to talk about exactly which documents they
20 would produce, what sort of data, et cetera.

21 But the name of the program, or it used
22 to be, it was not just CarePath, but Janssen
23 CarePath. Janssen being the entity that actually
24 sells the drug.

25 They decided to arrange their business

1 so that this entity develops and sells the drug,
2 Janssen, and this entity administers the CarePath
3 program, but the two are related. Of course they
4 analyze their return on investment. There is, again,
5 congressional testimony showing that a number of
6 these drug companies do that. And we haven't heard
7 them say that they don't have return on investment
8 related documents. They figure out how much they're
9 going to give to CarePath to give to patients. They
10 figure out how much that helps them drive additional
11 sales over in the Janssen entity.

12 We don't think that they should be able
13 to say, well, nothing that happens over in Janssen in
14 terms of additional sales is relevant because they
15 decided to put the CarePath program under JJHCS.

16 We're not trying to stand up and say,
17 oh, J&J makes a huge amount of money generally.
18 We're not interested in baby powder sales or shampoo
19 sales or anything.

20 JUDGE WOLFSON: I know that.

21 MR. DUNLAP: But we do think that this
22 fundamentally goes to what the purpose of this
23 program is and what the financial consequences of it
24 are.

25 They want to stand up and tell a story

1 that says, J&J provides this money to help patients
2 for their drugs and SaveOn comes in and loots and
3 steals and all the other pejorative terms Mr. Sandick
4 used.

5 We think that that is not true.

6 What we want to be able to stand up and
7 say, they don't offer this program to help patients.
8 They offer this program to help persuade people to
9 buy their drugs instead of their competitors.

10 And what SaveOn does on behalf of its
11 plans actually winds up with them making more money.
12 It's not, oh, they make lot of money, they can afford
13 this. It's that the direct consequences of the
14 actions that they have put at issue causes them to
15 make more money. That there is an offset through the
16 additional drug sales that we are able to drive by
17 signing more people up for CarePath that more than
18 offsets the additional CarePath funds that they're
19 spending.

20 This isn't some general argument, they
21 make a lot of money, they can afford it. That is not
22 what it is. It is directly tied to the allegations
23 in the complaint.

24 And I have to underscore -- you know,
25 we're glad to narrow, as I said, the search terms,

1 the types of requests that we go after here.

2 JUDGE WOLFSON: Tell me what that
3 narrowing would be. Let me hear that.

4 And I do appreciate, but I'm assuming
5 you are producing documents about CarePath being
6 created and what it's intended to do and how it's
7 being funded.

8 MR. SANDICK: Absolutely.

9 And the reason, by the way, it's named
10 Janssen CarePath is not like some secret thing, it's
11 because patients know the company as Janssen. So if
12 you take Darzalex, you know that is a Janssen drug.
13 Janssen CarePath helps you pay for it.

14 That is the reason that at one time
15 Janssen was part of the name, it's not some broad
16 conspiracy theory.

17 MR. DUNLAP: We're not alleging a
18 conspiracy theory.

19 JUDGE WOLFSON: What is the narrow terms
20 you would say?

21 MR. DUNLAP: We need documents showing
22 Johnson & Johnson's analysis of its return on
23 investment for CarePath. Not just the data about
24 what it's paid out. We know thing going to produce
25 that because that's driving their damages.

1 JUDGE WOLFSON: Repeat that.

2 MR. DUNLAP: We need Johnson & Johnson's
3 analysis of its return on investment for the CarePath
4 program, including how it helps patients adhere to
5 Janssen drugs once they enroll in CarePath, and we
6 want relevant communications on that topic as well.

7 MR. SANDICK: Your Honor, what that
8 would require is, essentially, a company wide X-ray
9 of how much money the company makes on all of these
10 different drugs, how much it costs to make these
11 drugs, how much it costs to market these drugs. All
12 of that information would be necessary. A vast
13 project, totally irrelevant to the case.

14 And on the subject of adherence, by the
15 way, this is something that is very important for
16 your Honor to know, [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] We have documents. We can
20 produce those to the Court if that is relevant, I
21 don't think it is necessary to reach this. But the
22 notion that the adherence story somehow resides
23 within JJHCS, they've looked at it. They know
24 already. Their partner is Express Scripts. They get
25 all sorts of tremendous industry wide data. Express

1 Scripts manages pharmaceutical benefits for more
2 Americans than any other company. So if there is an
3 adherence story, they would know it. And what
4 they've have figured out was it's nonsense. There is
5 no adherence story.

6 And what he said is not a narrowing of
7 the request, when he said, "oh, this is my narrowed
8 request." It is almost verbatim what they've asked
9 for in the requests, in the discovery correspondence,
10 before Judge Waldor. It's not a narrowing at all in
11 any regard.

12 MR. DUNLAP: Can I respond to those
13 points, your Honor?

14 JUDGE WOLFSON: Go ahead.

15 MR. DUNLAP: So, first, he's acting as
16 if we're asking him to create a return on investment
17 analysis from scratch and just go out into the
18 company and all the various corners of it and try to
19 figure this out.

20 No.

21 We want whatever analyses they have
22 already done on their return on investment for
23 CarePath. There has to be existing work product on
24 this. Whatever finance teams or product teams drive
25 it must have done something.

1 JUDGE WOLFSON: He's limiting it to
2 CarePath not on your drugs.

3 MR. SANDICK: Well, in order to figure
4 out the question of whether CarePath is helpful you
5 have to look at all of these other issues relating to
6 the manufacturing, development, marketing, and sale
7 of the drugs, and I don't think -- I know Mr. Dunlap
8 keeps saying there is one piece of paper and it will
9 have all the answers -- I don't think that is true,
10 not based on anything I have seen.

11 MR. DUNLAP: So the return on investment
12 documents would say, we put this much money into
13 CarePath, and then we make this much money in terms
14 of selling additional drugs to patients over in the
15 Janssen entity.

16 We're not asking him to, you know,
17 search every single corner for documents that are
18 irrelevant or -- we want whatever analysis they have
19 done.

20 They do CarePath for a reason. There
21 must be some analysis of the benefit that CarePath
22 has on Janssen's product line.

23 MR. SANDICK: The question of whether
24 CarePath operates for charitable purposes or for
25 business purposes is not really relevant to the case

1 if they're taking money from it.

2 If you run a car dealership and someone
3 steals a car once a week from your lot, it doesn't
4 matter whether as an overall matter the dealership is
5 still making money, it's still wrong to take cars
6 from people's lots, and it's wrong to induce people
7 to breach their terms and conditions in order to make
8 more money.

9 So the idea that somehow it matters how
10 profitable CarePath is or whether it's prudent for
11 J&J to run it, it's just moving the case far, far
12 away afield from anything in the complaint, the
13 judge's order, into this other subject of, is this
14 segment of J&J's business, the drug segment, is it
15 profitable, and is this just some gold dust from the
16 machine that it's okay for SaveOn to take.

17 Whether CarePath has a huge return on
18 investment or has no return on investment, it still
19 has no bearing on whether they're allowed to do this.
20 It's irrelevant to the case.

21 MR. DUNLAP: Your Honor, if I could just
22 respond quickly.

23 JUDGE WOLFSON: Yes.

24 MR. DUNLAP: It has a huge bearing on
25 whether we have actually damaged them because if the

1 action we take by signing someone up for CarePath,
2 what they call the SaveOn program, resulted in a new
3 patient signing up for CarePath, they're saying, wait
4 a minute, we have paid more to that patient than we
5 otherwise would have. But if by signing them up we
6 gave them more drug sales, we produced more drug
7 sales for Janssen, which is a J&J entity, then that
8 additional money eliminates whatever damage we say
9 was caused -- they say was caused by the additional
10 expenditure of CarePath funds.

11 Now, of course it's fine for him to
12 argument differently at trial if he wants to, but we
13 need these documents to show that we're not actually
14 injuring them.

15 And the car dealership scenario he
16 provides makes no sense, frankly. If you steal a car
17 a week from a car dealership, that might be illegal,
18 but it's not a GBL claim.

19 JUDGE WOLFSON: Let me ask you this
20 question: Mr. Sandick, is there any analysis --
21 their position is, guess what, we make more sales for
22 you. More people sign up because of the SaveOn
23 program. And that may not be accurate. You may
24 dispute it.

25 Is there a document or do you have

1 documents that show whether, indeed, as a result of
2 --

3 MR. SANDICK: If we do and it talks
4 about SaveOn, it would have already been produced.

5 MR. DUNLAP: Aw, if it talks about
6 SaveOn. That is the critical point.

7 MR. SANDICK: Well, yeah, this is a case
8 about SaveOn.

9 There is literally no way to search as a
10 practical matter without going to every corner of the
11 business to generate the information that Mr. Dunlap
12 wants to be generated for this case.

13 JUDGE WOLFSON: I didn't ask you to
14 generate it. What I asked was, has anyone done an
15 analysis for documents that exist as to whether there
16 are more patients signing up for your drugs or
17 getting the drugs who are SaveOn customers?

18 MR. SANDICK: I have seen that analysis
19 in their files stating that it's not true.

20 They have, along with their business
21 partner --

22 JUDGE WOLFSON: I asked if you have it?

23 MR. SANDICK: I haven't seen that
24 document.

25 JUDGE WOLFSON: Answer that question.

1 MR. SANDICK: I have not seen that
2 document.

3 JUDGE WOLFSON: I'm asking if there are.
4 Do a search for that.

5 I want to start in that instance. I
6 think that is a starting point.

7 MR. SANDICK: What is the search, your
8 Honor?

9 JUDGE WOLFSON: Whether there are
10 documents that exist that have looked at whether
11 there are more patients taking your drugs as a result
12 of being in the SaveOn program. That's the inquiry.

13 MR. DUNLAP: Your Honor, may I?

14 JUDGE WOLFSON: Yes.

15 MR. DUNLAP: I think it is necessary for
16 them to do that search, but we don't think it should
17 be limited to that. And let me tell you why.

18 JUDGE WOLFSON: I'm going to start with
19 that.

20 MR. DUNLAP: Limiting it to the SaveOn
21 program we think has too narrow a net because if they
22 have documents that say, you know, for every
23 additional hundred people we sign up for taking
24 Stelara, we make this much money, that may not
25 mention SaveOn, but if we could find those documents,

1 if we could find that analysis, and then we compare
2 that with our own separate analysis of how many new
3 patients we got to sign up, we can show additional
4 profits to them as well.

5 So the relevant documents may not
6 mention SaveOn. I understand you want to start
7 narrow, but I just want to put a stake in the ground
8 that we don't think limiting return on investment
9 information to SaveOn is sufficient.

10 MR. SANDICK: Yeah, I mean, if it
11 doesn't mention SaveOn, then I don't see what it has
12 to do with this issue.

13 I should also point out that going back
14 right to the start of the case we made some requests
15 to SaveOn, saying, we want to know about how your
16 program operates with other pharmaceutical companies,
17 because the public harm in the GBL 349 claim is not
18 limited to harm to patients taking our drugs, it
19 could be patients taking Pfizer's drugs, or some
20 other company's drugs, those could also be harmed
21 under 349.

22 They objected and said, anything beyond
23 Janssen and SaveOn, CarePath and SaveOn, we object
24 to. And Judge Waldor heard argument and ruled in
25 their favor and said, absent some very specific

1 showing, and a couple of times that showing has been
2 made, they don't have to tell you about their program
3 as it ties to other drug companies. But now they are
4 making the mirrored request saying we have to do
5 something that has nothing to do with SaveOn.

6 MR. DUNLAP: The mirrored request is
7 about Janssen drugs. We're not asking them for all
8 kinds -- the draft drugs at issue in this case.
9 We're not asking for return on investment on a whole
10 bunch of drugs that aren't at issue. What is their
11 return on investment for the drugs at issue, those 14
12 drugs.

13 JUDGE WOLFSON: I need it to be honed in
14 on SaveOn at the moment, and I'm limiting it to that.
15 You're certainly free to come back to me depending on
16 what we get. I know we're not done.

17 MR. DUNLAP: Thank you, your Honor.

18 JUDGE WOLFSON: All right.

19 But answer that, please.

20 MR. SANDICK: Okay.

21 JUDGE WOLFSON: Are those all the old
22 requests?

23 MR. DUNLAP: Well, I think there was
24 also a pricing issue, a pricing data issue.

25 JUDGE WOLFSON: The pricing of Janssen

1 drugs.

2 MR. DUNLAP: I could address that
3 briefly.

4 JUDGE WOLFSON: Go ahead.

5 MR. DUNLAP: So they allege in their
6 complaint that they have actually lowered the cost of
7 Janssen drugs, and they cite for that something that
8 they call a transparency report, which is a
9 publicly-available document that they put up on a
10 website that says, we have lowered the cost of
11 Janssen drugs, but it provides no actual data. And,
12 in fact, if you go and look at those reports, it
13 drops footnotes that says, we base this on internal
14 Janssen financials. But they haven't produced the
15 backup for them. And, in fact, we think that they
16 don't actually reduce drug prices, that they increase
17 drug prices. Which is relevant to why these plans
18 are fighting back, because the prices that Johnson &
19 Johnson continues to raise, continues to put
20 financial pressure on the plans.

21 We also think that there is information
22 showing that one of the reasons they're able to keep
23 raising drug prices is because of the CarePath
24 program and the fact that they're able to get more
25 people through that program to stay on their drugs as

1 opposed to taking competitors' drugs.

2 We think that that is highly relevant to
3 their allegations here.

4 MR. SANDICK: Your Honor, I think your
5 Honor may have said a few minutes ago that you didn't
6 think that the price of drugs was relevant in this
7 case, and it's not.

8 We produced the transparency reports as
9 a way of trying to give them something on an issue
10 that is actually irrelevant.

11 What they have asked for is, they say,
12 all internal data that supports the net price values.

13 Net price is, essentially, the price
14 that matters when we're talking about drug pricing.

15 And all internal data that supports it.

16 Again, this would require us to go well
17 outside of JJHCS to go through the entire company and
18 to try to explain what the pricing is, how it changes
19 over time.

20 First of all, they have a lot of this
21 information already through their business partners,
22 Express Scripts, and Accredo. Accredo is a pharmacy.
23 The pharmacy collects payment on these drugs. They
24 know, and their business partners know, what the drug
25 prices are.

1 But the case is not about what we charge
2 for the medication, is that a fair price, should be
3 charge something more or something less.

4 JUDGE WOLFSON: You're not going to
5 argue that your drug pricing was affected by their
6 program?

7 MR. SANDICK: No. The drug pricing --
8 we're not seeking lost profits. Drug pricing is set
9 by reference to a million factors. SaveOn is not one
10 of them.

11 MR. DUNLAP: If I could respond on that.

12 JUDGE WOLFSON: Yeah.

13 MR. DUNLAP: They say they produced
14 these transparency reports. Of course they're on the
15 website. This wasn't really much of a production.
16 It was something that was already available. And
17 they say the net price is what matters. And they
18 also say, oh, we have to go outside of JJHCS. We
19 have to do this wide range search.

20 They put these numbers into the
21 transparency reports.

22 JUDGE WOLFSON: But I want to know what
23 is the relevance of it.

24 MR. DUNLAP: It's relevant -- first,
25 it's relevant because we believe it will show that

1 their allegation that they actually lowered real
2 prices over the course of these years, something
3 they're intending to tell the jury --

4 JUDGE WOLFSON: Well, I hope not. I
5 just asked that. And I'm going to put that right out
6 there again to Mr. Sandick.

7 Are you in any way going to put to a
8 jury that you lowered prices and put that up to
9 suggest implicitly or explicitly it's because of
10 SaveOn.

11 MR. SANDICK: This is not a lost profits
12 case. This is about the CarePath program and whether
13 that funding has had to go up over time because of
14 their efforts.

15 I think that answers your Honor's
16 question.

17 JUDGE WOLFSON: But you're not going to
18 argue, and by that funding, we've now lowered prices,
19 or we've raised prices, or anything else?

20 MR. SANDICK: No. The drug pricing is
21 not set by reference to SaveOn, it's set by reference
22 to a million other things, but not SaveOn.

23 JUDGE WOLFSON: I'm going to put this
24 right out, Mr. Dunlap, we're on the record today: If
25 there will be no argument in this case at a trial, or

1 at a motion for summary judgment, or wherever it
2 might be, that CarePath in any way has impacted the
3 pricing of these drugs, it's a non-issue.

4 MR. DUNLAP: Well, they're going to
5 stand up --

6 JUDGE WOLFSON: I'm asking.
7 I want that representation.

8 MR. SANDICK: Yes, that is not the
9 theory of our damages.

10 JUDGE WOLFSON: I ask for a
11 representation that you will not make that argument.

12 MR. SANDICK: Yes, we are not going to
13 argue that our drug prices were lowered due to what
14 SaveOn has done.

15 The only argument we will make about
16 damages is how the funding for the CarePath program
17 within JJHCS has changed as a result of their
18 conduct.

19 MR. DUNLAP: Paragraph 80 of their
20 complaint they say, "SaveOn SP has inflated patients'
21 drug co-pay obligations even as JJHCS has
22 consistently decreased the price of the drugs
23 targeted by the SaveOn SP program," and it cites its
24 own transparency report, a quote that says, "Net
25 prices for Janssen medicines has declined for the

1 fifth year in a row."

2 MR. SANDICK: But that is not in any way
3 different from what I just said a moment ago, your
4 Honor. What we say there is that they have taken a
5 bigger share of the CarePath program payments even
6 while we have reduced drug prices, but we are not
7 alleging that the drug price reduction was caused by,
8 was driven by, is related to SaveOn's program. The
9 drug prices are set not by reference to what SaveOn
10 is doing, by reference to lots of other things, but
11 not that.

12 MR. DUNLAP: The issue, your Honor, is
13 that we don't think that allegation is true. We
14 think that, in fact, they have raised drug prices.

15 JUDGE WOLFSON: Well, I want to know
16 what you're going to do with allegation number 80.

17 MR. SANDICK: What am I going to do with
18 allegation number 80?

19 JUDGE WOLFSON: Yeah.

20 MR. SANDICK: What I'm going to do with
21 allegation number 80 is show that they are taking an
22 increased piece of the co-pay support program.

23 We are not intending --

24 JUDGE WOLFSON: And that is not
25 impacting your pricing?

1 MR. SANDICK: No.

2 JUDGE WOLFSON: Lowering your pricing or
3 raising your pricing?

4 MR. SANDICK: No.

5 That line in there, which is far from
6 central to what our case is going to be about, what
7 that line in there is meant to say is that it is
8 commonly the case in sort of the market of public
9 discourse for insurance companies to say, oh, yes, we
10 know that your drug prices have gone up, but that is
11 not our fault, that is the drug company's fault that
12 raise their prices every year.

13 So we made this sort of rhetorical
14 aside.

15 We are not intending to show, will not
16 show, or not alleging that the cause of drug prices
17 moving up or down is because of SaveOn.

18 MR. DUNLAP: Well, no, because they are
19 going to stand up and they're going to say, we have
20 been lowering our prices, and then they're going to
21 come in and say, while we have been lowering our
22 prices SaveOn has come in and taken a bunch of our
23 CarePath assistance programs --

24 JUDGE WOLFSON: I think I heard you're
25 not going to say that.

1 MR. DUNLAP: Well, I thought he said he
2 wasn't limiting it to the damages or the cause of the
3 increase.

4 MR. SANDICK: No, we are not going to
5 argue that our damages are in the form of lost
6 profits by having reduced prices due to SaveOn. That
7 is not our theory of the case, our damages, or
8 anything else like that.

9 If they make arguments in their case
10 using SaveOn data about drug pricing, say, no, no,
11 no, actually, these guys are -- you know, they're
12 ganas, they're taking from everyone, then we will be
13 able to come back and say something. But our case is
14 not about the drug prices being set by reference to
15 anything that SaveOn does. I want to make that very
16 clear.

17 MR. DUNLAP: He keeps trying to link it
18 to SaveOn.

19 Put SaveOn aside for a second.

20 He is going to stand up at trial, if it
21 gets there, and say, Johnson & Johnson has been
22 lowering its drug prices.

23 JUDGE WOLFSON: Why would you say that?

24 MR. SANDICK: I don't think that we're
25 going to say that.

1 MR. DUNLAP: It's in his complaint.

2 JUDGE WOLFSON: I hear it's in the
3 complaint. Just because it's in the complaint --
4 that's why I'm looking for representations today.

5 MR. SANDICK: We're not planning to
6 prove a case about our drug prices. The case that
7 we're going to prove on damages, just to spell it out
8 --

9 JUDGE WOLFSON: You're not going to open
10 and say, and you're not going to close and say, we're
11 such good guys, we keep reducing the price, but they
12 stealing from us?

13 MR. SANDICK: No.

14 JUDGE WOLFSON: Do you agree you're not
15 going to do that?

16 MR. SANDICK: I agree that we're not
17 going to do that. That's not the theory of our case.

18 MR. DUNLAP: I just want to make clear,
19 he is not going to make any representation that they
20 have been lowering drug prices?

21 MR. SANDICK: We are not going to make
22 that representation.

23 I want to leave myself one out, your
24 Honor. If they start making allegations about the
25 greedy drug companies that have raised prices, I

1 think we're allowed to reply to that. But that is
2 not something we're planning to present. And, in any
3 event, they and their business partners have tons of
4 data about this. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] Why all the
9 lies and the deception?

10 MR. DUNLAP: Well, I'm not getting into
11 all those false accusations.

12 Look, we had raised the drug pricing for
13 two reasons. One is that they allege that they were
14 increasing these prices. And if they are going to
15 make that allegation, we want to see the data on
16 which they are basing that.

17 JUDGE WOLFSON: Okay. I have just
18 gotten a commitment that they weren't.

19 MR. DUNLAP: We also want to make the
20 point that it's our understanding that one of the
21 reasons Johnson & Johnson can, in fact, continue to
22 increase its drug prices is because it is able to get
23 patients to commit to taking its drugs through the
24 CarePath program. That the CarePath program, one of
25 the consequences of it is, that it allows Johnson &

1 Johnson to increase drug prices. That they don't
2 exist separately, that, in fact, it's part of Johnson
3 & Johnson's strategy, that they've increased prices
4 for reasons having nothing to do with material costs
5 or efficacy or anything like that, but just because
6 they can. And one of the reasons they can do that is
7 because they made the patients pricing sensitive to
8 this program and they keep buying more drugs. And
9 the cost of that is borne by the employers. And we
10 think that evidence goes to whether or not this is
11 actually a public harm or not or whether it's a
12 program designed to benefit J&J through increased
13 drug prices. And we also think it could go to
14 damages and injury if we can show that by adding new
15 patients to the CarePath rolls, where they are able
16 to raise their prices more, not just make more sales,
17 but make more sales at a higher price. That could
18 offset damages.

19 JUDGE WOLFSON: Did you want to take a
20 break?

21 COURT REPORTER: Yes, I would love to.

22 JUDGE WOLFSON: Okay.

23 (Brief recess taken.)

24 JUDGE WOLFSON: Mr. Dunlap, you got one
25 minute to summarize. Before we took the break we

1 kind of interrupted you.

2 MR. DUNLAP: I think I just finished
3 making another pitch about why we thought drug
4 pricing was relevant even if they are not going to
5 affirmatively say that they have been decreasing
6 prices.

7 One other point I just want to make on
8 the financial stuff generally to the extent that your
9 Honor is going back and forth about whether or not
10 it's relevant or wants to put it off.

11 We have seen a number of documents that
12 have been produced since we submitted the letter and
13 since the conference occurred that we think
14 underscores that they do look at return on
15 investments. And we're glad to make a supplemental
16 submission to you summarizing those documents, and
17 we're happy to do that promptly if that will help
18 you.

19 JUDGE WOLFSON: Okay.

20 For today I'm not directing that
21 anything further be provided on the financial. I
22 don't foreclose you if you got something else that
23 you want to submit to me that you think would be
24 convincing, but, first, would you please speak to the
25 other side and confer as to, based on that, why you

1 think.

2 MR. DUNLAP: This is on the drug
3 pricing?

4 JUDGE WOLFSON: Yes.

5 MR. DUNLAP: Okay.

6 JUDGE WOLFSON: Okay, I think the next
7 thing now is with regard to this issue that's been
8 briefed the last week or so on custodians.

9 MR. DUNLAP: And my associate Ms. Snow
10 is going to present argument on that.

11 JUDGE WOLFSON: Okay.

12 All right. So we got a couple of
13 disputes here. This started with, I guess, 12
14 custodians, et cetera. November 7 Judge Waldor
15 granted the motion as to six custodians. And in that
16 regard the Plaintiff is now -- and I think you
17 reached some agreement on that, but the question is
18 the scope of the search terms. Right now they have
19 been as to the CAP program, the Plaintiff has said,
20 right?

21 MS. SNOW: Yes, just two narrow terms as
22 to the CAP program.

23 JUDGE WOLFSON: And I think that you
24 have gone back and forth as to what did Judge Waldor
25 mean.

1 Well, guess what? As Judge Waldor had
2 put in her order, you know, I had the opportunity if
3 I would like to speak to her. Actually, Wayne
4 communicated with her chambers and we got a response
5 that told us -- well, you know what, I'll let Wayne
6 put into the record because you communicated with
7 them about it.

8 MR. FANG: The law clerk sent
9 correspondence back to my inquiry.

10 JUDGE WOLFSON: Tim.

11 MR. FANG: Tim.

12 And he summarized the dispute as he
13 understands it, and he spoke to Judge Waldor about
14 the differing interpretations, the parties'
15 interpretation of her order. So, ultimately, what
16 she first said -- what he first said was, and
17 Defendant was right, that the judge did not
18 specifically order specifics regarding new custodian
19 searches, because the judge had asked the parties to
20 work up logistics, but upon reviewing and considering
21 the parties' dispute, Judge Waldor agrees -- and I'm
22 reading his e-mail -- that "Johnson & Johnson's
23 position is the only one that makes sense from a
24 proportionality standpoint. We were only adding the
25 new custodians because of their association with the

1 CAP program. [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]. Similarly, we will limit the searches
5 of the new custodians' records to the CAP related
6 term that Judge Waldor specified since that is the
7 only reason these people are involved in the
8 discovery in the first place."

9 MS. SNOW: Your Honor, you know, I hear
10 what she is saying.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 I would ask that we be allowed discovery
16 on that earlier time period.

17 Additionally, I think we did raise new
18 evidence that demonstrates why the two narrow
19 searches --

20 JUDGE WOLFSON: I'm going to address
21 that in a moment. Okay?

22 [REDACTED]
23 MR. SANDICK: Let me pass it off to
24 Ms. Long. I have had enough. I don't want to say
25 anything else for the rest of the day.

1 MS. LONG: I just wanted to clarify, I
2 think as to the search terms at issue in the
3 November 7 order we did meet and confer where we were
4 considering the position that was offered by SaveOn
5 and a potential for compromise in the middle.
6 Ultimately we did not make that compromise. But
7 prior to the October 30 conference we had agreed to
8 run a specific CAP search term which did not include
9 a SaveOn modifier for the 2016 to 2022 period. We
10 did that to try to avoid the dispute that ultimately
11 went before Judge Waldor. And what we took back from
12 the meet and confer was whether to consider running
13 that term over some period of these CAP custodians
14 earlier.

15 Ultimately we said back to Ms. Snow, and
16 we've had several meet and confers on this point,
17 that we did not consider that is what Judge Waldor
18 had ordered us to do so we declined to run the term.

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 It is always possible that there is some
24 correspondence just outside of that window, but
25 consistent with our meet and confer our position has

1 been, as Mr. Fang just said, the order prescribed
2 only these search terms and only for that time
3 period, and that is why we cabined our searches
4 accordingly.

5 JUDGE WOLFSON: She didn't say that,
6 though. What she said is -- she didn't give a
7 specific order on it, but she said what makes sense
8 to her based on the discussion.

9 So it was not ruled upon. So to the
10 extent you went back and forth, you're right, I think
11 you're interpreting what her meaning might be, but it
12 does say, the short answer is, "we did not order
13 specifics regarding the new custodian searches. We
14 wanted the parties to work it out." And then the
15 rest of the response was her kind of weighing in on
16 proportionality though.

17 So it's not necessarily a done deal.

18 So, let's talk about, is there
19 compromise in here? That is really where we are.
20 And, one, I want to talk about dates. I don't
21 understand this whole thing about before 2022. There
22 is some earlier date involved or not.

23 MS. LONG: [REDACTED]

24 [REDACTED]

25 JUDGE WOLFSON: [REDACTED]

1 [REDACTED]

2 MS. LONG: [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 MS. SNOW: If I can speak on that. Two
6 points on that.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED].

10 JUDGE WOLFSON: [REDACTED]

11 [REDACTED]

12 MR. LoBIONDO: We'll search for those.

13 JUDGE WOLFSON: You're going to search
14 for those.

15 MR. LoBIONDO: [REDACTED]

16 [REDACTED]

17 MS. SNOW: So I think my second point is
18 that, really, it's about the essence of the CAP
19 program, and [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

24 [REDACTED] And that is what we are -- that is what
25 we believe we're entitled to discovery on.

1 And I think that for those custodians we
2 do need to go back further. It is clear that, like,
3 for example, John Hoffman was working on the response
4 to accumulators and maximizers in 2020.

5 And I think there is another additional
6 point I have here, which is that the search terms
7 that they have agreed to run just on the CAP program
8 do not actually capture all of the documents that
9 would be involved in that response, which ultimately
10 turned into that program.

11 JUDGE WOLFSON: Okay.

12 So you're saying there could be other
13 documents because perhaps even there wasn't a name of
14 a CAP program but the idea of what this program could
15 be was out there and maybe it's not being captured by
16 the search terms?

17 MS. SNOW: Yes.

18 JUDGE WOLFSON: What are the search
19 terms?

20 MS. SNOW: So I believe they're
21 referring to the two additional search terms that
22 were requested in SaveOn's other motion regarding the
23 CAP program, and there is this additional term which
24 they agreed to starting -- they agreed to it in
25 September, which was also covering the CAP program

1 specifically, but there are a number of other terms
2 that I'm happy to get into the specifics on but that
3 encompass mentions of SaveOn, mentions of ESI and of
4 accumulator because, of course, many of the documents
5 reveal that [REDACTED]

6 [REDACTED].

7 JUDGE WOLFSON: And you haven't reached
8 agreement on these?

9 MS. LONG: I want to be clear that we're
10 limited as to the new CAP custodians. We have run
11 these search terms for the original time period and
12 through the refresh as to 17 other custodians.

13 JUDGE WOLFSON: Why wouldn't you run
14 them for these?

15 MS. LONG: Because, respectfully, their
16 request was cabined -- was about the CAP program.
17 Judge Waldor opened the door about CAP.

18 We're happy to take the terms back to
19 mid-2021 or to another date, and we can investigate
20 what that date was.

21 JUDGE WOLFSON: Well, the reason I asked
22 that is, if these were the people that were somehow
23 involved with the CAP program, they may have been
24 involved in the discussions at an earlier date as
25 well and may be relevant custodians.

1 So I'm going to direct that it happen,
2 that you run them for these additional custodians as
3 well.

4 I can't believe they just suddenly
5 appeared just for CAP and didn't have involvement
6 before.

7 MR. LoBIONDO: They were certainly
8 relevant, your Honor.

9 The argument we made before Judge Waldor
10 and she agreed with was, as I understand it, was, we
11 have custodians that are covering these issues.
12 These people would be cumulative of what we already
13 produced. And she decided they were not cumulative
14 as to CAP, which is why she thought that they should
15 be added not with respect to proportionality, only as
16 to CAP.

17 JUDGE WOLFSON: It's four more. I'm not
18 worried about it. I'm doing it.

19 MR. LoBIONDO: It's six more for five
20 years.

21 MS. LONG: Are we talking about number
22 of custodians or the search terms as to the CAP
23 custodians?

24 JUDGE WOLFSON: Those custodians that
25 we've agreed to, but running the additional search

1 terms on them.

2 MS. LONG: Back to 2016?

3 JUDGE WOLFSON: Right, what the
4 attorneys agreed to, correct.

5 MR. SANDICK: So all of the search terms
6 that we've used in the case, that is your Honor's
7 ruling?

8 JUDGE WOLFSON: I don't know of all the
9 search terms, it's whatever is related --

10 MR. SANDICK: Because that is the core
11 issue.

12 MR. LoBIONDO: This is part of the
13 issue, frankly, that we've been having, which is
14 that, we brief up an issue, they get a ruling they
15 don't like. They say, no, Judge Waldor actually
16 meant something else. Judge Waldor said, no, this is
17 what I meant. And now we're re-litigating it for a
18 third time until they've finally gotten a ruling that
19 is going to give them everything they asked for.

20 JUDGE WOLFSON: I don't know about
21 everything. All I heard was the terms that would be
22 relevant to them would be referring to SaveOn,
23 referring to ESI. It's not the world.

24 What I'm trying to capture with them,
25 the only reason is, that I'm saying it, is these are

1 CAP people. The likelihood is that they were
2 involved somehow before this in looking at these
3 issues, and to the extent they were, they should
4 produce documents. But I want to limit it then to
5 this world, not every search term.

6 MR. LoBIONDO: Okay.

7 JUDGE WOLFSON: So come up with the
8 search terms that relate to this and confer on it.

9 MS. SNOW: Your Honor, we're happy to
10 make a narrow proposal of search terms.

11 JUDGE WOLFSON: Okay, let's do it.

12 New custodians that were brought up in a
13 letter.

14 I guess you brought up Scott White,
15 Blasine Penkowski, Karen Lade, and Juliette Deshaies.

16 I think Plaintiff is saying that Judge
17 Waldor rejected proposal of these additional
18 custodians, that they were part of that motion to
19 compel 12, and she ordered only half basically,
20 right?

21 Okay.

22 And now what you're claiming is that
23 there are new documents that were not part of the
24 motion before Judge Waldor that show that these
25 proposed custodians have more knowledge than you

1 previously knew and presented to her and that you
2 want them to be added, right?

3 MS. SNOW: Yes, your Honor.

4 There are actually five remaining
5 custodians that were left undecided, and we have
6 renewed our motion as to all five, however, in the
7 event you determine that Judge Waldor did resolve as
8 to -- you know, we don't think the order states
9 that -- it doesn't name those custodians at all. At
10 the conference she didn't issue a ruling as to those
11 custodians, and so we don't think she's decided
12 those. But we have also put forth significant new
13 evidence as to White, Penkowski, Lade and Deshaies,
14 as we've mentioned.

15 JUDGE WOLFSON: Ms. Long.

16 MS. LONG: Yeah.

17 I think your Honor said our position
18 fairly succinctly. We believe Judge Waldor already
19 decided this. I think that is fairly clear from the
20 text of her order. This issue was part of 27 single
21 spaces of briefing and 146 exhibits that went before
22 Judge Waldor, and ultimately Judge Waldor split the
23 issue. As your Honor said, there were 12 custodians
24 that were at issue in the motion. She ordered us to
25 provide six of seven. We later conferred on which

1 six those would be and agreed and resolved as to
2 those. And I just don't think there is anything
3 ambiguous about the order and what was resolved.

4 JUDGE WOLFSON: Do you think that --
5 their position is we've identified, now based on new
6 documents I'm assuming that you could not have
7 presented to her at the time because you didn't have
8 them, that based on new documents this is a new and
9 different argument to be made?

10 MS. LONG: No.

11 If I could take the custodians in turn.

12 First, as to Ernie Knewitz, there are no
13 new documents. There are no new documents in
14 SaveOn's opening brief. There are no new documents
15 on the reply brief.

16 As to the remaining custodians that are
17 at issue --

18 JUDGE WOLFSON: Yeah.

19 Let's start with White and Penkowski.

20 MS. LONG: Sure.

21 They're the same types of documents that
22 were at issue, for example, calender invitations
23 concerning JALT, et cetera. And as was before Judge
24 Waldor, the issue with Mr. Knewitz and Mr. White and
25 Ms. Penkowski are all that they serve on what's

1 called the JALT.

2 We have a senior executive who was on
3 the JALT. Her name is Katie Mazuk. She has already
4 been designated as a custodian in this case on all
5 relevant issues on all agreed upon search terms. And
6 so any discovery that would be relevant, anything
7 that the JALT considered, will be produced from Ms.
8 Mazuk's files. That is something that was before
9 Judge Waldor. That is consistent with the documents
10 that are still before your Honor. Ms. Mazuk is the
11 senior most executive with responsibility for making
12 decisions about the CarePath program.

13 As to Mr. White. Mr. White is one of
14 the highest ranking executives in the Johnson &
15 Johnson family of companies and he has no
16 responsibilities day to day for CarePath.

17 Mr. White came up first in a motion that
18 SaveOn brought in June about our interrogatory
19 responses, that was also at issue at the October
20 conference, where we have consistently provided
21 representation to the other side that Mr. White does
22 not have responsibility for -- does not have day to
23 day responsibility for the CarePath program. He has
24 no unique documents because, again, he is on the
25 JALT, which is the main piece of evidence that SaveOn

1 cites. So is Ms. Mazuk. And all of the documents
2 that SaveOn has cited Ms. Mazuk is either on or is a
3 custodian of. The calendar invitations include
4 Ms. Mazuk. And so the only --

5 JUDGE WOLFSON: So let me ask you this
6 question: The documents that they now provided say
7 that -- you know, forget the day to day
8 responsibility -- that White may have been involved
9 in the high level discussions about CarePath,
10 SaveOn's role and how it was impacting Plaintiff's
11 program, litigation.

12 Why do you think that White would not
13 have relevant documents?

14 MS. LONG: [REDACTED]

15 [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED]
20 [REDACTED].

21 And that is consistent with all of the
22 documents that we've cited, including decks and
23 other -- the evidence that is at issue before your
24 Honor today.

25 The other evidence comes down to being a

1 counterparty on certain work orders with Trial Card,
2 and, again, I don't see how that is relevant here.

3 And I think the last category of new
4 documents, which, you know, SaveOn points to as kind
5 of a smoking gun by a third party is an [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] et
10 [REDACTED]
11 [REDACTED].

12 First, we've now found the calendar
13 invitation -- what we believe is the calendar
14 invitation for this meeting. It does not include any
15 of those individuals. [REDACTED]

16 [REDACTED]. And, also, as
17 your Honor just ordered, [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]. John Hoffman is one of

21 the CAP custodians that you just ordered additional
22 search terms be run over.

23 So there is not a gap in our production
24 here.

25 I don't see in the document what SaveOn

1 is claiming, but even if it was true, those files
2 would be produced already.

3 And I think when we're looking at
4 someone as senior as Mr. White and Ms. Penkowski,
5 and the same would apply for Mr. Knewitz, there is a
6 particular concern about Apex custodians. And I
7 recognize that the Apex doctrine comes up more so in
8 the context of depositions, but if we're talking
9 about cumulative files from very senior people, I
10 don't think that SaveOn has met that showing.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED] There is no additional
15 benefit to these other custodians.

16 JUDGE WOLFSON: Ms. Snow.

17 MS. SNOW: Yes.

18 So, first of all, I just want to address
19 the point that [REDACTED]
20 [REDACTED]. That's because
21 that's who they actually have produced documents
22 from. That doesn't mean that that's the only place
23 there are relevant documents.

24 [REDACTED]
25 [REDACTED]

1

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4

[REDACTED] You would -- I have a copy if you'd like.

5

JUDGE WOLFSON: I have it here too.

6

MS. SNOW: [REDACTED],

7

8

9

And I also want to make a point about this document.

10

This is the only -- [REDACTED]

11

12

13

14

There is not a single document produced before January 2022 that suggests this idea.

15

So what this document shows us is that

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For that reason alone I think he's highly likely to have relevant documents.

21

22

And just addressing the Trial Card work order.

23

24

I think we brought up Trial Card a few times today.

25

1 [REDACTED]
2 [REDACTED]
3 Those are very key aspects of how you actually run a
4 program like this. [REDACTED] a

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 [REDACTED]

11 That goes to the viability we have been
12 discussing. It goes to the harm, because they're
13 having to -- you know, J&J alleges that they're
14 having to up the amount that they're reimbursing
15 patients.

16 JUDGE WOLFSON: Yeah, so let me ask you
17 this question: So Scott White is apparently the
18 company group chairman of North America
19 Pharmaceuticals, right? So one of the highest
20 ranking executives.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 MS. SNOW: [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED] So we see in numerous documents --

3 JUDGE WOLFSON: At the what level?

4 MS. SNOW: [REDACTED] [REDACTED] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 You know, they make a point about us
8 going after so many executives. [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED].

13 [REDACTED]

14 [REDACTED]

15 [REDACTED].

16 JUDGE WOLFSON: What is it precisely
17 you're looking for Mr. White to produce?

18 MS. SNOW: Well, I think we've been
19 missing many documents to show who actually -- like
20 the decisions being made.

21 You know, [REDACTED]

22 [REDACTED] and we're not disputing that.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] [REDACTED]

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MS. LONG: May I respond?

10

JUDGE WOLFSON: Yes.

11

MS. LONG:

12

Let's start with just a brief look at

13

Exhibit 2.

14

15

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17

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22

What Ms. Snow was talking about,

23

24

25

1 [REDACTED]
2 [REDACTED],
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED].

7 JUDGE WOLFSON: But how was that meeting
8 captured?

9 MS. LONG: Sure.

10 So there are a couple of ways that the
11 meeting was captured. There are, first, these
12 calendar invites. Usually attaching a presentation.
13 The presentation has content, sometimes relevant to
14 the CAP program, for example.

15 Ms. Mazuk was on the calendar
16 invitation, was on the e-mail where those decks were
17 communicated.

18 JUDGE WOLFSON: But what happens at the
19 meeting, and where is that document?

20 MS. LONG: So what happened at the
21 meeting I believe is that the presentation -- the
22 deck is presented and there is a discussion. I am
23 not aware of any minutes, for example, that come out
24 of that meeting, but if there was subsequent e-mail
25 discussion, it would presumably be as we've seen in

1 the documents amongst [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED],
5 [REDACTED] for
6 [REDACTED] -- this was at issue with
7 respect to our interrogatories -- different areas of
8 the company that have absolutely nothing to do with
9 the CarePath program.

10 And just, again, to emphasis, as to
11 Mr. Knewitz, we have also stated, for example, that
12 he has nothing to do with CarePath. He occasionally
13 made statements regarding the lawsuit, and that is
14 the limitation. We have represented that in
15 interrogatory responses.

16 JUDGE WOLFSON: Which one are you
17 referring to?

18 MS. LONG: Mr. Knewitz. It's
19 K-N-E-W-I-T-Z.

20 JUDGE WOLFSON: Okay.

21 MS. LONG: And then as to the remaining
22 folks, again, those decisions would be captured -- to
23 the extent that there are documents, which I think if

24 [REDACTED]
25 [REDACTED]

1 [REDACTED], but certainly SaveOn is
2 welcomed, as I'm sure they will, to depose Ms. Mazuk
3 to learn about those discussions, but I don't have
4 any evidence, nor do they, that those discussions
5 were otherwise memorialized in e-mails that have
6 somehow been withheld from our productions.

7 If there are relevant communications, if
8 there are relevant documents, decks, minutes, those
9 would have already been produced to opposing counsel.

10 MS. SNOW: I just have a few quick
11 responses.

12 First of all, to the last point, we need
13 documents before we're taking depositions. And the
14 standard that is at issue is, have we shown that
15 these individuals are likely to have relevant
16 documents.

17 Going to the point that Ms. Long was
18 making, while it's not in the new evidence, there are

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 JUDGE WOLFSON: Did you present that to
23 Judge Waldor?

24 I don't want to go over ground that she
25 already decided. So I don't want to do that.

1 I'm only looking at if they're new
2 documents and you have a new argument to make,
3 because she obviously considered this already.

4 MS. SNOW: Your Honor, if we could just
5 look at the old documents in the context of the new
6 documents. There is evidence that shows that these

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 I [REDACTED]

12 [REDACTED]

13 [REDACTED]. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED],

17 [REDACTED] now,

18 [REDACTED]

19 [REDACTED]

20 JUDGE WOLFSON: I don't know if you want
21 to take these one by one or as a group, I mean, you
22 dealt with them kind of as a group overall, but I
23 have a couple of concerns here. I certainly don't
24 want to go over ground that Judge Waldor actually
25 dealt with unless, as I said, there was something new

1 and there was a reason to do so and to revisit it.
2 Respectfully, I don't think it would be otherwise
3 appropriate.

4 Now, I don't know how well this was
5 addressed or simply if it was, like, get these, this
6 is all you're getting. You know, you get six
7 custodians, I'm not giving you more, or whatever it
8 might be.

9 MS. SNOW: So, actually, in the
10 transcript she said, I'm going to order some to
11 start, and then we'll deal with the Apex custodians
12 later, so I think today is that later.

13 JUDGE WOLFSON: Did she leave that
14 opening?

15 They're seeming to shake their head no
16 on the other side of the table.

17 MS. LONG: The transcript, your Honor,
18 is long. In that context, we disagree with what was
19 set forth by Ms. Snow.

20 JUDGE WOLFSON: Is it the October
21 transcript?

22 MS. LONG: Yes, it is the October
23 transcript. We agree on that.

24 But, your Honor, specifically Judge
25 Waldor said, "Well, I thought CAP -- the 12 new

1 custodians included CAP custodians, I'm going to open
2 the doors on CAP," and then later, "I'm going to
3 permit additional custodians. I know we're down to
4 six." Referencing the six custodians that ultimately
5 Judge Waldor ordered.

6 I think that is also consistent with,
7 frankly, the natural reading of the order that
8 followed the conference. Here the order read, "With
9 regard to SaveOn's requested relief as set forth in
10 docket entry number 165, custodians' motion, the
11 Court will require" --

12 JUDGE WOLFSON: I'm looking at the
13 transcript, I'm reading, so if you could wait a
14 moment, please, I'm reading the portion of the
15 transcript.

16 Well, this is what she says, she said,
17 "I said start with four. Mr. Mangi will talk to them
18 about it. And then we can discuss the two that
19 you're trying to protect with the Apex doctrine,
20 which is, according to adversary, inapplicable to
21 documents."

22 Mr. Mangi, "Yeah."

23 The Court, "I assume ultimately you're
24 going to want to depose them."

25 MS. ARROW: Your Honor, what page are

1 you on?

2 JUDGE WOLFSON: 119, 120.

3 Well, it doesn't look like she
4 definitively closed the door, that is true. So I
5 don't think I should look at it that way. It clearly
6 was a start. So I don't want to rely on that.

7 So let's talk about the merits of the
8 issue.

9 Now, what are the limited search terms
10 with regard to White and Penkowski that you want to
11 use?

12 MS. SNOW: We're happy to provide a
13 proposal on that.

14 JUDGE WOLFSON: Very limited.

15 MS. SNOW: Very limited, yes, your
16 Honor.

17 JUDGE WOLFSON: Very limited.

18 Confer with your adversary.

19 MS. SNOW: And for the time period --
20 the full time period that they've used for every
21 other custodian?

22 JUDGE WOLFSON: That's fine, but, as I
23 said, these are going to be limited search terms. I
24 do understand they are high level executives and may
25 be duplicative of what others have, but I also know

1 people sometimes write e-mails and do things that
2 don't include everybody else when they want to talk
3 to someone else in the company, and it happens, so
4 there could be other documents, but, please, limit
5 it.

6 Now we've got -- in fact, I mean,

7 [REDACTED]
8 [REDACTED]. Very relevant. I've got quotes from her in
9 e-mails. I understand others may have gotten them,
10 but that is an important person.

11 Yeah, do your search terms and I'm going
12 to allow it.

13 MS. SNOW: Thank you, your Honor.

14 JUDGE WOLFSON: Then we've got Lade,
15 L-A-D-E.

16 MS. SNOW: Yes.

17 So just to start about the so-called
18 brand employees.

19 There's new evidence -- if you look at
20 Exhibit 6, it includes the e-mail, actually, that

21 [REDACTED] [REDACTED]
22 [REDACTED] -- I can give you a copy of the
23 exhibit.

24 JUDGE WOLFSON: I have them here, it's
25 just finding where 6 starts.

1 Thank you, Wayne.

2 Okay, I got it.

3 MS. SNOW: If you look at the -- I
4 believe the very bottom of that first page, it says,

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 So Ms. Lade is a brand employee, and I
10 think -- you know, turning to just looking at the new
11 evidence, in May of 2017 -- if you look at Exhibit
12 11.

13 I'm happy to also give you a copy.

14 JUDGE WOLFSON: Now, these documents
15 were produced to you because they came through other
16 custodians?

17 MS. SNOW: Yes.

18 But if you look at Exhibit 11, there's
19 an e-mail -- I'll give you a minute.

20 JUDGE WOLFSON: Okay, I'm up to 11.

21 Go ahead.

22 MS. SNOW: So if you look at the second
23 page of that exhibit, there's an e-mail that Ms. Lade
24 sent and there is not a single current custodian on
25 that e-mail, and it's all about --

1 JUDGE WOLFSON: So how did you get it?

2 MS. SNOW: Because later in the thread
3 it was forwarded to a custodian.

4 JUDGE WOLFSON: Okay.

5 I see you shaking your heads on this
6 side, but that's happenstance, that it ended up being
7 forwarded to someone. She authored an e-mail, and if
8 it's relevant -- and she's authoring a lot of
9 documents. I don't know why she would not be a
10 custodian to search if it's relevant material.

11 MS. LONG: Your Honor, one, there is no
12 mention of SaveOn in this document; and two, I want
13 to be [REDACTED]

14 [REDACTED] [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED]

18 JUDGE WOLFSON: Yes, but you take the
19 position that they are. Yes, you do. So the fact
20 that they don't isn't really the issue because you
21 are going to be arguing they are.

22 Look, you know what, I have enough on
23 this. This is someone who you should be getting
24 documents from. I'm adding it.

25 You know, everybody wants to slice this

1 so finely. It's a huge case. There is a lot of
2 discovery on both sides. Let's just do it instead of
3 fighting over it. It will take you less time to
4 produce and move on than to fight.

5 MS. SNOW: And, your Honor, to be clear
6 on those, for the regular set of search terms and the
7 full regular time period?

8 JUDGE WOLFSON: Regular time period, but
9 I don't know about all the search terms. You have to
10 hone something that is appropriate for her, it cannot
11 be a universe. I have to have some limitations.

12 So work on those search terms with your
13 adversary please.

14 Okay?

15 MS. SNOW: And turning to Ms. Deshaies.

16 JUDGE WOLFSON: Yes.

17 MS. SNOW: So her primary -- or her
18 relevance in the new additional document is she was
19 working with a really important third party. The
20 third party is named Archbow. It's all one word,
21 A-R-C-H-B-O-W. That third party was working on the

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 JUDGE WOLFSON: Why is that critical?

19 MS. SNOW: It's critical to our
20 mitigation defense.

21 They have these ways that they're trying
22 to use to limit their damages.

23 JUDGE WOLFSON: Aren't there others
24 involved in this issue that are already custodians?

25 MS. SNOW: There are others involved in

1 the CAP program. [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 JUDGE WOLFSON: I never understood
6 Erleada to be the driving drug in this whole case.

7 I'm not buying this one. I have to have
8 some limits. So I'm not ordering that to be done.

9 Does that take care of all our new
10 custodians?

11 Go ahead.

12 MS. LONG: I think Mr. Knewitz is still
13 at issue, your Honor. That was the custodian without
14 any new evidence that we had discussed earlier. I
15 believe you [REDACTED]

16 [REDACTED].

17 Mr. Knewitz is essentially a PR
18 professional. [REDACTED]

19 [REDACTED] [REDACTED]

20 JUDGE WOLFSON: I'm not adding him.

21 You have the ones we've added, Lade,
22 Penkowski and White, but you're going to confer on
23 search terms, please.

24 MS. SNOW: Yes.

25 Thank you.

1 JUDGE WOLFSON: Anything else open?

2 MR. SANDICK: No.

3 Thank you, your Honor. We really
4 appreciate the evident time you spend reading all of
5 this paper and helping us resolve the issues.

6 Thank you very much.

7 JUDGE WOLFSON: No problem.

8 MR. DUNLAP: We greatly appreciate your
9 attention to this.

10 (Proceedings concluded at 1 p.m.)

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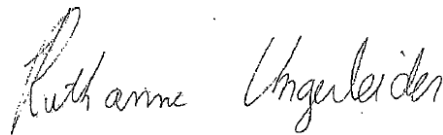
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C E R T I F I C A T E

I, RUTHANNE UNGERLEIDER, a Certified Court Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the stenographic notes of the deposition of said witness who was first duly sworn by me, on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel in this case, nor am I financially interested in this case.



RUTHANNE UNGERLEIDER, C.C.R., C.R.R.

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[& - accusations]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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EXHIBIT 2



E. EVANS WOHLFORTH, JR.

666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com
Direct (212) 451-2954

Admitted in New York
and New Jersey

December 28, 2023

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (ES) (CLW)

Dear Special Master Wolfson:

Defendant Save On SP, LLC (“**SaveOn**”) submits this letter pursuant to Your Honor’s request during the status conference on December 21, 2023.

The November 7 Order did not decide SaveOn’s motion to compel Plaintiff Johnson & Johnson Health Care Systems, Inc. (with its affiliates, “**J&J**”) to designate additional custodians as to five custodians. Dkt No. 165.¹ As SaveOn noted in the December 21 conference, after it

¹ The Court’s November 7, 2023 Order required J&J to add six of seven custodians identified in that Order. Dkt No. 173 at 2. Where the Court denied requests for relief in the November 7 Order, it did so explicitly. Dkt. No. 173 at 2 (“SaveOn’s request for relief set forth in Docket Entry No. 162 is DENIED”). In addressing SaveOn’s motion regarding additional custodians, in contrast, the

submitted its motion, J&J and third parties produced additional documents confirming the relevance of four of those custodians: Scott White, Blasine Penkowski, Karen Lade, and Juliette Deshaies.

This new evidence demonstrates that:

- **White and Penkowski** discussed whether SaveOn’s services purportedly violate CarePath’s terms and conditions—which goes to J&J’s understanding of those provisions (which J&J unilaterally drafted), the disputed meaning of which is at the heart of J&J’s claim that SaveOn induced plan members to violate them.
- **Lade** was involved with telling patients about accumulators, maximizers, and SaveOn in 2018 but did not tell them that those services violated CarePath’s terms and conditions—which goes to J&J’s claim that SaveOn’s conduct violates those contract terms and SaveOn’s defense that J&J’s claim is a recently concocted, made-for-litigation position.
- **White and Penkowski** were counterparties for J&J on contracts with TrialCard, the J&J vendor that administered the CarePath Program, so had authority over CarePath’s payments to patients via TrialCard—which goes to J&J’s allegations that SaveOn caused it to make increased payments that injured it and threatened CarePath’s financial viability and to SaveOn’s defenses that J&J’s own CarePath budget was the cause of these payments (not SaveOn) and that J&J could continue

Court stated that it “will require” J&J to add six additional custodians but said nothing regarding the other five requested custodians.

making CarePath payments.

- **Penkowski** and **Lade** were involved with J&J's earliest formulation of a response to SaveOn's services—which goes to SaveOn's defense that J&J could have reduced or stopped payments to patients on SaveOn-advised plans but did not, thus failing to mitigate J&J's damages.
- **White** and **Deshaies** know that CarePath is a marketing program that generates a return for J&J by selling more drugs and raising drug prices (by making patients less cost sensitive to drug costs)—which goes to SaveOn's defenses that SaveOn's conduct does not threaten CarePath's financial viability, and that helping more patients enroll in CarePath financially benefits J&J (offsetting some or all of its alleged injury and damages), and any harm to CarePath is a commercial harm and not a public harm under the GBL.

The details follow.

White and **Penkowski** met with third party Archbow Consulting in January 2022, a few months before J&J filed this lawsuit, [REDACTED]. [REDACTED]. The document that shows this, Exhibit 1 (ARCHBOW_000443),² produced by Archbow, is the earliest document produced from before the filing of this lawsuit that reflects any understanding by J&J that SaveOn purportedly induced

² Archbow produced this document on October 30, 2023 following the Court conference on SaveOn's motion. [REDACTED]

breaches of CarePath’s terms and conditions. The document’s context strongly indicates that this was a made-for-litigation position. It is relevant when and why White and Penkowski formed that understanding on behalf of J&J, which they then shared outside of J&J.

White played key roles with CarePath’s budget and J&J’s “investment” in that program.

[REDACTED]

[REDACTED]

[REDACTED] Ex. 2 (TRIAL-
CARD_00002367).³ [REDACTED]

[REDACTED] Ex. 3
(JJHCS_00140480) (attaching Ex. 4 (JJHCS_00140485)).⁴ [REDACTED]

[REDACTED]

[REDACTED] Ex. 4
(JJHCS_00140485) (emphasis added). [REDACTED] for

drugs at issue, (i) countering allegations that SaveOn’s conduct caused it to pay more in CarePath funds, Compl. ¶¶ 23, 115, and (ii) undermining any suggestion that SaveOn threatens CarePath’s financial viability, *id.* ¶ 114. They also show that CarePath is a marketing program, countering J&J’s claim that harm to CarePath is a public harm, necessary to its GBL claim. Compl. ¶¶ 113-15.

³ All documents with the Bates TRIALCARD_ cited in this letter were produced by TrialCard on October 27, 2023—after the submission of SaveOn’s motion to compel.

⁴ All documents cited from J&J’s production, with the Bates JJHCS_, were produced by J&J on December 22, 2023.

Penkowski was integral to J&J's response to accumulators, maximizers, and SaveOn as early as May of 2018—four years before the filing of this lawsuit.⁵ [REDACTED]

[REDACTED] Ex. 6 (JJHCS_00140929); *see also* Ex. 7 (JJHCS_00142063) ([REDACTED]

[REDACTED] Ex. 8 (TRIALCARD_00002400). But, [REDACTED]

[REDACTED] countering J&J's allegation that it believed such members were ineligible for CarePath. *See* Compl. ¶¶ 48, 108, and illustrating J&J's failure to mitigate its purported damages. *Aff. Defs.* ¶¶ 24-29.

[REDACTED] Ex. 9 (TRIALCARD_00003383); Ex. 10 (JJHCS_00142033). [REDACTED]

[REDACTED] Ex. 9 (TRIALCARD_00003383). Among other things, [REDACTED]

[REDACTED] *Id.* at -384. This indicates that [REDACTED]

[REDACTED] which tend to disprove J&J's allegations that SaveOn's conduct harms plan

⁵ [REDACTED] Ex. 5 (JJHCS_00142781).

members, Compl. ¶ 114, and that the so-called “SaveOnSP Program” is different from plan benefit design, Compl. ¶¶ 1, 3. Further, it bolsters SaveOn’s defense that J&J failed to mitigate its damages, Aff. Defs. ¶¶ 24-29.

Lade was involved with J&J’s response to accumulators, maximizers, and SaveOn at least early as May of 2017—and apparently did *not* believe that SaveOn’s services violated CarePath’s terms and conditions in 2018. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ex. 11 at -360 (JJHCS_00141359). [REDACTED]

[REDACTED] *Id.* This shows that J&J was fully aware of accumulator and maximizer programs but decided not to reduce its CarePath budget, failing to mitigate its purported damages, Aff. Defs. ¶¶ 27-28, [REDACTED]

[REDACTED]

[REDACTED], *see, e.g.*, Ex. 12 (JJHCS_00144460) (attaching Ex. 13 (JJHCS_00144463)), counter to J&Js allegations, *see* Compl. ¶¶ 48, 108. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 13 (JJHCS_00144463). This is directly contrary to J&J’s allegations that SaveOn could set those terms. Compl. ¶¶ 3, 10.

Deshaies helped formulate J&J’s response to accumulators and maximizers, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. Ex. 14 (JJHCS_00141440) (attaching Ex. 15 (JJHCS_00141442)). [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Ex. 15 (JJHCS_00141442). J&J has alleged that copay assistance is to benefit the patient, not a marketing program, Compl. ¶¶ 113-15, [REDACTED]
[REDACTED].

These documents confirm the relevance of these four individuals, whom the Special Master should compel J&J to designate as custodians, running all agreed or ordered search terms from April 1, 2016 to November 7, 2023. SaveOn stands on its prior motion as to Ernie Knewitz.

SaveOn appreciates the Court's attention to this matter.

Respectfully submitted,

/s/ E. Evans Wohlforth, Jr.

E. Evans Wohlforth, Jr.
Robinson & Cole LLP
666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com

Hon. Freda L. Wolfson

Page 8

David Elsberg (admitted *pro hac vice*)
Andrew R. Dunlap (admitted *pro hac vice*)
Meredith Nelson (admitted *pro hac vice*)
Elizabeth H. Snow (admitted *pro hac vice*)
SELENDY GAY ELSBERG PLLC
1290 Avenue of the Americas
New York, NY 10104
(212) 390-9000
deslberg@selendygay.com
adunlap@selendygay.com
mnelson@selendygay.com
esnow@selendygay.com

Attorneys for Defendant Save On SP, LLC

EXHIBIT 3



E. EVANS WOHLFORTH, JR.

666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com
Direct (212) 451-2954

Admitted in New York
and New Jersey

January 16, 2024

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (ES) (CLW)

Dear Special Master Wolfson:

On behalf of Defendant Save On SP LLC (“**SaveOn**”), we write to ask you to compel Plaintiff Johnson & Johnson Health Care Systems, Inc. (with its affiliates, “**J&J**”) to fully comply with that portion of the Court’s November 7, 2023 Order compelling J&J to add six additional document custodians and to run previously-agreed or ordered search terms over their documents. Dkt No. 173 at 2. Contrary to the Order, while J&J agreed to add the custodians, it refuses to run all search terms over their documents.

SaveOn moved the Court “to compel JJHCS to add the above twelve custodians and run ***all*** agreed-upon or Court-ordered search terms and any future agreed-upon or Court-ordered search terms over their files.” Dkt No. 165 at 15 (emphasis added). On November 7, 2023, Judge

Waldor granted that motion as to six of seven custodians, without limitation.¹ Yet J&J refuses run all search terms during the current discovery period of April 1, 2016 to November 7, 2023 for those custodians, saying it will instead run only two search terms related to its CAP program and only from January 1, 2022 to November 7, 2023. Ex. 1 (January 8-12, 2024 Email Chain).

J&J's position is baseless. It argues that a different part of the Order, compelling it to run three search terms related to its CAP program (the "CAP terms")² for all custodians from July 1, 2022 to October 30, 2023, Dkt. No. 166 at 5, somehow limits its searches for the six new custodians to those same restricted terms and time period. Ex. 1 (January 8-12, 2024 Email Chain). Not so. SaveOn's motion for new custodians, Dkt. No. 165, and its motion for the CAP terms, Dkt No. 166, were separate. Judge Waldor resolved them separately. *Compare* Dkt. 173 at 2 (ruling "with regard to SaveOnSp's request for relief as set forth in Docket Entry No. 165") *with id.* at 2-3 ("resolv[ing] the issues set forth in Docket Entry No. 166"). J&J has no basis to conflate the two; the Court's ruling on SaveOn's custodians motion stands on its own.

SaveOn's custodian motion asked that J&J run *all* search terms for new custodians, Dkt. 165 at 15, and Judge Waldor granted that motion as to the six custodians without limitation, Dkt No. 173 at 2. Judge Waldor separately imposed a time period starting in 2022 for the CAP terms, Dkt. 173 at 2-3, because SaveOn sought a similar time period in its CAP terms motion, Dkt. No. 166 at 5, but SaveOn sought no such limit in its custodians motion, Dkt. 165 at 15, and Judge Waldor imposed none. Where the Court imposed time limits, Dkt. 173 at 2-3 (setting "temporal scope" of CAP terms), or denied relief, *id.* at 2 ("SaveOnSP's request for relief set forth in Docket

¹ The parties agreed to add the following six custodians: Quinton Kinne, Daphne Longbothum, William Shontz, Alison Barklage, John Hoffman, and L.D. Platt.

² The terms are: "CAPm" OR "CAPa" OR "adjustment program." Dkt No. 166 at 5.

Entry No. 162 is DENIED”), it did so expressly, but it did not do so here.

Even were the Order ambiguous (it is not), there is no basis to limit searches for these custodians to the CAP terms or to exclude documents before 2022. J&J does not represent that these individuals’ relevant work was only on the CAP program and only in that time period. *See* Dkt. No. 165 at 22-25. In its custodians motion, to the contrary, SaveOn cited evidence of their broader relevance. *See, e.g.*, Dkt. No. 165 at 8-13 ([REDACTED]).

Unsurprisingly, then, these custodians have relevant documents that do not contain the CAP terms that J&J says it will use. Shontz, for instance, [REDACTED]. Ex. 2 (JJHCS_00002339) (“[REDACTED]”). This is strong evidence that J&J never believed that the existing CarePath language proscribed SaveOn, devastating to the tortious interference claim. Solely running the terms “CAPa,” “CAPm,” or “adjustment program,” would exclude this plainly relevant email. So too would it exclude [REDACTED], Ex. 3 (JJHCS_00011226), and [REDACTED] Ex. 4 (JJHCS_00001206), both of which demonstrate J&J’s awareness of how SaveOn works and go towards SaveOn’s mitigation defense. *Aff. Defs.* ¶¶ 24-29. J&J has no basis to restrict its searches of the custodians’

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documents to the three CAP terms.

These custodians also have relevant documents from before 2022, the date from which J&J declares it will begin running its searches. [REDACTED]

[REDACTED]. Dkt. No. 165 Ex. 126 (JJHCS_00069171); Compl. ¶¶ 93, 96, 102. [REDACTED]

[REDACTED] for a J&J drug at issue in this case. Ex. 5 (JJHCS_00104963); Compl. ¶ 91. [REDACTED]

[REDACTED]. Ex. 6 (JJHCS_00142275). [REDACTED]

[REDACTED] Ex. 7 (ARCHBOW_000436), and [REDACTED]

[REDACTED]. Ex. 8 (JJHCS_00156513). Such documents concerning cost support and J&J's responses to accumulators and maximizers go to J&J's damages and SaveOn's mitigation affirmative defense. *See* Aff. Defs. ¶¶ 24-29. J&J has no basis to exclude the six custodians' documents from before 2022.

SaveOn thus respectfully requests that, consistent with the Order, Your Honor compel J&J to run all agreed-upon or court-ordered search terms for Shontz, Hoffman, Barklage, Longbothum, Kinne, Platt for the full discovery timer period of April 1, 2016 to November 7, 2023.

SaveOn appreciates the Court's attention to this matter.

Respectfully submitted,

/s/ E. Evans Wohlforth
E. Evans Wohlforth, Jr.
Robinson & Cole LLP
666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com

David Elsberg (admitted *pro hac vice*)
Andrew R. Dunlap (admitted *pro hac vice*)
Meredith Nelson (admitted *pro hac vice*)
Elizabeth H. Snow (admitted *pro hac vice*)
SELENDY GAY ELSBERG PLLC
1290 Avenue of the Americas
New York, NY 10104
(212) 390-9000
deslberg@selendygay.com
adunlap@selendygay.com
mnelson@selendygay.com
esnow@selendygay.com

Attorneys for Defendant Save On SP, LLC

EXHIBIT 4



December 22, 2023

Julia Long
(212) 336-2878

BY EMAIL

Elizabeth Snow, Esq.
Selendy Gay Elsberg PLLC
1290 Avenue of the Americas
New York, NY 10104

**Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC,*
2:23-cv-02632 (ES) (CLW)**

Dear Elizabeth:

We write in response to your December 15, 2023 letter concerning our November 27, 2023 meet and confer, and further to our November 28 letter on the same topic.

I. SaveOnSP's Requests as to Terms & Conditions and Financial Information

In its December 15, 2023 letter, SaveOnSP asserts that “[n]othing in the Court’s Order required SaveOnSP to further limit its request [on terms and conditions] as JJHCS suggests.” Dec. 15, 2023 Letter from E. Snow to J. Long at 2. This assertion is refuted by the plain text of the Court’s Order and Judge Waldor’s direction at the October 30, 2023 conference. The Court’s November 7, 2023 Order admonished SaveOnSP “to narrow the scope of its requests” with respect to “Docket Entry Nos. 146 (regarding CarePath terms and conditions) and 150 (seeking financial information and data on patient drug adherence).” ECF No. 173 at 1. Indeed, at the conference, Judge Waldor made clear that SaveOnSP ignored prior instructions from March 2023 “to review and modify [its requests related to terms and conditions] so that [SaveOnSP] [wasn’t] asking for everything in the world.” Oct. 30, 2023 Tr. at 43:2-5.

As you know, Judge Wolfson has directed SaveOnSP to provide JJHCS with narrowed requests as to both the terms and conditions and the financial information by Tuesday, December 26. In our call with Judge Wolfson, we were surprised to hear SaveOnSP assert that such a letter already was sent to JJHCS. The letter to which SaveOnSP appeared to refer during our call with Judge Wolfson did not narrow SaveOnSP’s requests with respect to the terms and conditions requests, or even mention the financial information requests. In any event, JJHCS will promptly review SaveOnSP’s narrowed requests when they are received. Please provide your availability to meet and confer so that the parties can discuss any remaining issues in advance of the January 24 conference before Judge Wolfson.

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II. CAP Custodians

As you know, Judge Waldor’s November 7 Order resolved SaveOnSP’s motion requesting the addition of “CAP” custodians, i.e., individuals that SaveOnSP claimed were relevant due to their purported involvement in the CAP program. Pursuant to that Order, Judge Waldor directed JJHCS to add six of the seven “CAP” custodians and further directed the parties to “meet and confer regarding the *identities* of the additional custodians and *to work out any necessary logistics*.” ECF No. 173 at 2 (emphasis added). Judge Waldor further directed the parties to fashion “a search designed to capture documents wherein the terms ‘CAP A’, ‘CAP M’, or ‘adjustment program’ (or reasonable variations of those terms) are found in the same documents as the term ‘SaveOn’ (or reasonable variations / abbreviations).” ECF. No. 173 at 2-3.

JJHCS has complied with that order. *First*, following the November 27, 2023 meet and confer, JJHCS accepted SaveOnSP’s proposal that JJHCS add Kinne, Longbothum, Shontz, Barklage, Hoffman, and Platt as CAP custodians. *See* Nov. 28, 2023 Letter from J. Long to M. Nelson at 2. *Second*, JJHCS also proposed two search strings for those custodians designed to conform specifically to the text of the November 7 Order and to capture documents related to the CAP program:

- (“CAPa” OR “CAPm” OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (case sensitive)

Despite JJHCS’s strict compliance with Judge Waldor’s instruction, SaveOnSP now claims that “only using the two search strings listed [above]” would purportedly “violate the Court’s Order.” Dec. 15, 2023 Letter from E. Snow to J. Long at 1. Apparently dissatisfied with the ruling and refusing to follow it, SaveOnSP even suggests that the “[t]he Court granted SaveOnSP’s motion as to the six CAP custodians “without limitation as to time periods or search terms.” Dec. 15, 2023 Letter from E. Snow to J. Long at 1-2. This argument has no support in the text of Judge Waldor’s Order, and JJHCS declines to accept it. Indeed, SaveOnSP’s own motion to compel the addition of these custodians concedes that JJHCS’s CAP program was not created until “in or around 2021.” ECF No. 165 at 7. SaveOnSP cites to no authority in support of its characterization of Judge Waldor’s order, because no such support exists. Contrary to SaveOnSP’s insistence, the November 7 Order only requires the parties to “work out any necessary logistics” concerning the additional custodians. ECF No. 173 at 2. JJHCS remains available to do so.

III. Document Refresh

JJHCS is fully complying with the Court’s November 7 Order that calls for a “update” of “discovery responses (including productions), *without limitation*, through the date of this Order[.]” ECF No. 173 at 3 (emphasis in original). JJHCS already has begun to update its collection and review of documents—from both custodial and noncustodial sources—through November 7, 2023 using the parties’ agreed-upon search parameters. JJHCS intends to

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substantially complete its production of these documents by the end of January 2024. Consistent with Judge Waldor's order and Judge Wolfson's further instruction at the December 21 conference, JJHCS also intends to supplement its Interrogatory responses. JJHCS will do so by the end of January 2024, as Judge Wolfson proposed, subject to SaveOnSP's confirmation that it will do the same. Please confirm.

We also address below several specific aspects of the "refresh" portion of Judge Waldor's order.

A. JJHCS Search Terms and Noncustodial Collections

In its December 15, 2023 letter, SaveOnSP requests confirmation that JJHCS will run "at a minimum" the search terms listed in Exhibit 1 to that letter. As outlined below, SaveOnSP's exhibit contains at least three errors. A corrected list of search terms that JJHCS has agreed to run appears in **Appendix 1** to this letter.

First, SaveOnSP's Exhibit 1 implies that JJHCS agreed to add Silas Martin as a full custodian. This is incorrect. As JJHCS has twice clarified, JJHCS ran specific search terms over Silas Martin's documents to satisfy its discovery obligations as to RFP No. 20. *See* Sept. 6, 2023 Letter from E. Shane to E. Snow at 2; Sept. 11, 2023 Letter from J. Long to E. Snow at 8. As part of JJHCS's ongoing refresh, JJHCS will re-run those Martin-specific search terms from July 2, 2022 to November 7, 2023. *See* Appendix 1.

Second, SaveOnSP's Exhibit 1 also incorrectly suggests that JJHCS agreed to run three Silas Martin-specific search terms over all custodians.¹ As outlined in the same September 6, 2023 letter, JJHCS agreed to run the following terms "over Silas Martin's custodial data, to satisfy its discovery obligations as to RFP No. 20." At no point did JJHCS agree to run these terms over other existing JJHCS custodians, and we will not do so.

Third, as noted above, SaveOnSP's Exhibit 1 ignores the Court's November 7 Order with respect to the "CAP" search terms. Prior to the October 30 conference, in an effort to avoid motions practice on the issue, JJHCS agreed to run the search string "CAPa" OR "CAPm"

¹ The three terms are as follows:

- (accumulator* OR maximizer* OR copay OR co-pay OR CAP) w/25 (impact* OR effect* OR patient* OR equity)
- (accumulat* OR maximiz* OR "essential health benefit*" OR EHB* OR "non-essential health benefit" OR "nonessential health benefit" OR NEHB* OR "Affordable Care Act" OR ACA OR Obamacare) w/25 (report* OR article* OR post* OR "white paper" OR WP OR analy* OR sponsor* OR partner*)
- (IQVIA OR Excenda OR "Analysis Group" OR Xcenda OR "The Eagle Force") w/25 (accumulator* OR maximizer* OR copay OR co-pay OR CAP)

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or “adjustment program,” without a SaveOnSP limitation, as to the then-existing custodians for the time period April 1, 2016 to July 1, 2022. *See* ECF No. 166 at 8. SaveOnSP then moved to compel JJHCS to “review documents from July 1, 2022 through October 30, 2023 hit by the search ‘CAPm’ OR ‘CAPa’ OR ‘adjustment program.’” *Id.* at 5. As you know, the Court denied this request and instead directed JJHCS to review documents wherein the terms “CAPa” OR “CAPm” or “adjustment program” ***“are found in the same documents as the term ‘SaveOn’ (or reasonable variations / abbreviations).”*** ECF No. 173 at 2-3 (emphasis added).

In light of the Court’s Order, we will run the two search terms as set forth above in bullets in Section II, for the period January 1, 2022 through November 7, 2023, for both the new “CAP” custodians and previously agreed-upon JJHCS custodians.² A complete list of the search terms that JJHCS has agreed to run appears in Appendix 1.

As to other categories of collections, including those from noncustodial sources, JJHCS reiterates that it will refresh its production of those documents and data consistent with JJHCS’s prior representations and agreements between the parties. To the extent that SaveOnSP’s Exhibit 2 attempts to expand the scope of these productions, JJHCS rejects that expanded scope. The Court’s November 7 Order is clear: the order directs the parties to update discovery responses, including noncustodial productions, through the date of the Order, and otherwise does not expand the scope of either party’s existing requests. *See* ECF No. 173 at 3.

B. SaveOnSP’s Search Terms and Noncustodial Collections

As you know, the November 7 Order required “both parties [to] update their discovery responses (including productions), *without limitation*” through the date of the Order. *See* ECF No. 173 at 3 (emphasis in original). In the November 28 letter, JJHCS requested that SaveOnSP confirm that: (1) SaveOnSP has completed a full collection of every custodian’s documents through November 7, 2023; (2) SaveOnSP will supplement its production of documents using all previously agreed upon search terms for all previously agreed-upon SaveOnSP custodians through that date; and (3) SaveOnSP is making every effort to produce these documents expeditiously, so that the parties can complete fact discovery—including fact witness depositions—by April 25, 2024.

SaveOnSP has refused to do so. Instead, in its December 15 letter, SaveOnSP asserts that ***“/s/subject to JJHCS’s confirmation of its production parameters,*** SaveOnSP will

² Consistent with its representations to SaveOnSP and the Court, JJHCS will continue to run the term (“CAPa” OR “CAPm” OR “adjustment program”) for previously agreed-upon custodians (Lindsey Anderson, Spilios Asimakopoulos, John Franz, Evelyn Hall, Brandon Jeffcoat, John King, Jeremy Mann, Katie Mazuk, Silviya McCool, Hattie McKelvey, Adrienne Minecci, Lauren Pennington, William Robinson III, Nidhi Saxena, Heather Schoenly, Carol Scholz, and Jasmeet Singh) for the period April 1, 2016 to July 1, 2022. *See* Dec. 1, 2023 Letter from J. Long to E. Snow at 1.

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refresh its production running the search terms on Exhibit 4 for the custodians listed on that Exhibit through November 7.” Dec. 15, 2023 Letter from E. Snow to J. Long at 2 (emphasis added).

At the outset, it is not appropriate for SaveOnSP to condition its compliance with the Court’s November 7 Order on anything, let alone “JJHCS’s confirmation of its production parameters,” including, e.g., demands that JJHCS “identify how many documents [JJHCS’s] terms generate for review.” *Id.* SaveOnSP’s equivocation is especially troubling given Judge Waldor’s instruction that both parties update their “discovery responses . . . *without limitation*[.]” See ECF No. 173 at 3 (emphasis in original). Just as in the case of its motion relating to the so-called “Janssen Interrogatories” (ECF No. 162), SaveOnSP has incorrectly described the Court’s order and then insisted that JJHCS comply with an order that does not exist. JJHCS will not do so.

Additionally, based on yesterday’s colloquy between SaveOnSP and Judge Wolfson, we understand that SaveOnSP understands its obligation to update *all* of its discovery, including its production of documents and data collected from non-custodial sources. But to ensure that the record is clear, by January 5, 2023, please confirm that SaveOnSP will refresh its collection of documents listed in **Appendix 2** to this letter, including *inter alia* updating SaveOnSP’s productions of its business plans and claims data through November 7, 2023. SaveOnSP also produced several categories of information for the time period April 1, 2016 to July 1, 2022, including SaveOnSP’s patient list, call notes, client list, terminated client list, and drug lists. Please confirm that SaveOnSP will comply with Judge Waldor’s order to update these discovery responses through November 7, 2023 as well. See Appendix 2.

Finally, SaveOnSP’s Exhibit 4 omits nineteen search terms and phrases which SaveOnSP previously agreed to run through its custodial documents, including emails, text messages, mobile data, Chatter, Teams messages, hard drive data, and personal email collections, consistent with the Court’s prior orders and SaveOnSP’s prior representations. See ECF No. 144. The search terms with missing phrases appears in red font below.

- (“don’t” OR “not” OR allowed OR never OR permit OR “can’t” OR cannot) W/5 (mention OR disclose OR say OR inform* OR divulge) W/15 (SaveOn OR SaveOnSP OR SOSP OR Save On OR manufacturer* OR mfgr* OR program)
- (avoid* OR conceal*) AND (co-insurance OR variable OR copay OR “co-pay”)
- (Business w/15 plan) OR “Business plan”
- (copay* OR co-pay* OR coins* OR co-ins* OR “cost share”) W/15 (zero OR 0 OR \$0 OR “no cost” OR “free of charge”)
- (counter* OR strateg* OR “course correct” OR “bypass” OR respon* OR solution OR solv*) W/25 (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi OR Novartis)

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- (detect* OR evade* OR avoid* OR hide OR conceal*) AND (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi OR Novartis)
- (detect* OR evade* OR hide OR conceal*) AND (co-insurance OR coinsurance OR variable)
- (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi OR Novartis) w/25 (maximizer* OR accumulator* OR reduce* OR modif* OR change*)
- (Premera AND (“drug list” OR list)) W/25 (Janssen OR JJHCS OR Erleada OR Simponi OR Stelara OR Tremfya OR Zytiga)³
- (Premera AND (remove OR change)) W/25 (Janssen OR JJHCS OR Erleada OR Simponi OR Stelara OR Tremfya OR Zytiga)⁴
- “@express-scripts.com”⁵
- “@notionpartners.com”
- “strategy plan” OR (strategy /15 plan) OR “monthly plan” OR (monthly /15 plan) OR “transition plan” OR (growth /15 plan)
- Cobicistat
- Darunavir
- Emetricitabine
- manufacturer* w/10 (maximizer* OR accumulator*)
- Tenofovir Alafenamide

³ SaveOnSP agreed to run this term over Melanie Jerred’s custodial documents from July 1, 2022 to October 1, 2023.

⁴ SaveOnSP also agreed to run this term over Melanie Jerred’s custodial documents from July 1, 2022 to October 1, 2023.

⁵ For the period December 2015 through August 31, 2016. Unless otherwise noted, the terms listed above do not have a date limitation that was more narrow than the previously applicable time period of April 1, 2016 to July 1, 2022.

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- **UPTRAVI OR selexipag**

Please promptly confirm that (1) SaveOnSP did in fact run all of the terms listed in **Appendix 3** to this letter, as agreed by the parties, for the period April 1, 2016 to July 1, 2022; (2) SaveOnSP did in fact substantially complete production of all non-privileged, responsive documents hitting on all of these terms for the original time period; and (3) SaveOnSP will use this full set of terms for the purposes of its refresh collection.

* * * *

Please respond by January 5, 2023. We remain available to meet and confer.

Very truly yours,

/s/ Julia Long
Julia Long

APPENDIX 1

JJHCS Search Terms⁶

Search Terms for JJHCS Existing Custodians

- **Custodians**: Lindsey Anderson, Spilios Asimakopoulos, John Franz, Evelyn Hall, Brandon Jeffcoat, John King, Jeremy Mann, Katie Mazuk, Silviya McCool, Hattie McKelvey, Adrienne Minecci, Lauren Pennington, William Robinson III, Nidhi Saxena, Heather Schoenly, Carol Scholz, and Jasmeet Singh
- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
- “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB*
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
- “This program offer may not be used with any other coupon, discount, prescription savings card, free trial, or other offer”
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- “Save On” (*case sensitive*)
- “other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (essential OR nonessential OR non-essential OR “non essential”) w/50 (“Affordable Care Act” OR ACA OR Obamacare)
- (Fein OR Pembroke OR Adam OR “Drug Channels”) AND afein@drugchannels.net AND (SaveOnSP OR accumulat* OR maximiz*)
- CAPa OR CAPm OR “adjustment program”⁷

⁶ Unless otherwise noted, the time period applicable for the terms is April 1, 2016 to November 7, 2023.

⁷ JJHCS agreed to run this term for April 1, 2016 to July 1, 2022 period only.

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP)⁸
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)⁹

Search Terms for “CAP” Custodians

- **Custodians**: Quinton Kinne, Daphne Longbothum, Allison Barklage, John Hoffman, William Shontz, and L.D. Platt
- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP)¹⁰
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)¹¹

Silas Martin Search Terms

- **Custodians**: Silas Martin
- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP
- (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit” OR “nonessential health benefit” OR NEHB* OR “Affordable Care Act” OR ACA OR Obamacare) w/25 (report* OR article* OR post* OR “white paper” OR WP OR analy* OR sponsor* OR partner*)
- (accumulator* OR maximizer* OR copay OR co-pay OR CAP) w/25 (impact* OR effect* OR patient* OR equity)
- (IQVIA OR Excenda OR “Analysis Group” OR Xcenda OR “The Eagle Force”) w/25 (accumulator* OR maximizer* OR copay OR co-pay OR CAP)

⁸ January 1, 2022 to November 7, 2023.

⁹ January 1, 2022 to November 7, 2023.

¹⁰ January 1, 2022 to November 7, 2023.

¹¹ January 1, 2022 to November 7, 2023.

APPENDIX 2

SaveOnSP's Non-Custodial Collections

- Documents sufficient to show SaveOnSP's organizational structure, including organization charts
- SalesForce records for members of SaveOnSP-advised plans who were prescribed at least one Janssen Drug
- Data responsive to Request for Production No. 41: (1) manufacturer; (2) brand name; (3) national drug code; (4) recipient of manufacturer assistance; (5) patient identifier; (6) pharmacy for relevant drug fill; (7) pharmacy address; (8) prescription number; (9) prescription fill date; (10) number of unites; (11) days of supply; (12) unit of measure; (13) copay or coinsurance amount; (14) patient names; (15) patient dates of birth; (16) patient TrialCard enrollment numbers; and (17) Patient Identifier (Cardholder ID)
- Data responsive to Request for Production No. 42: (1) pharmacy name; (2) pharmacy address; (3) patient identification; (4) patient state of residence; (5) identifier of whether patient is on a SaveOnSP Program; (6) insurance/health plan name; (7) insurance/health plan member ID; (9) health/insurance plan group name; (10) insurance/health plan group number; (11) product description; (12) NDC; (13) product form; (14) product strength; (15) number of units; (16) days of supply; (17) unit of measure; (18) date of prescription fill; (19) patient copayment; (20) patient coinsurance payment; (21) patient deductible payment; (22) copay coupon/manufacturer assistance amount applied to the prescription cost; (23) patient names; (24) patient dates of birth; (25) patient TrialCard enrollment numbers; and (26) Patient Identifier (Cardholder ID)
- All agreements between SaveOnSP and Express Scripts or related entities
- List of patients who were entered into SaveOnSP's system and were prescribed at least one Janssen Drug (the "Patient List")
- List of SaveOnSP's call center locations
- List of clients who engaged SaveOnSP's services
- Final versions of Annual Reviews
- Documents sufficient to show the identities of patients whose claims were put on hold or rejected because the patient was not enrolled in the SaveOnSP program
- Documents sufficient to show the identities of patients whose claims were put on hold or rejected because the patient was not enrolled in the SaveOnSP program, but whose claim was later permitted to proceed after that patient was enrolled
- SaveOnSP's operating agreements and any amendments thereto

- SaveOnSP’s business plans and “business plan-like” documents, including any draft business plans
- Breakwall Holdings LLC’s operating agreements
- Video and audio recordings of training sessions, including daily “huddle” sessions
- All SaveOnSP Drug Lists
- Documents or data received from third parties as part of a formal production or otherwise
- All Master Services Agreements between ESI, SaveOnSP, and Prime Therapeutics
- List of former clients who terminated their agreements with SaveOnSP
- SaveOnSP Privacy and Data Security Policy
- May 2023 Updated Confidentiality and Nondisclosure Policy

APPENDIX 3

SaveOnSP Search Terms¹²

- “Project Recapture” OR “Rescue Study” OR “adherence data”
- “zero cost share” OR “\$0 cost share”
- ((“transfer*” OR reject* OR POS OR “point of sale” OR step edit*) W/15 pharm*) OR “Error Code 73” OR ((drug* OR med* OR fill*) W/15 (cover*))
- ((essential OR “non-essential” OR nonessential) W/10 (benefit*)) OR EHB* OR NEHB*
- ((patient* OR chang* OR mov* OR switch*) W/30 (new W/5 (drug* OR med* OR brand*)))
- ((SaveOnSP OR SaveOn OR “Save On SP” OR “Save On” OR SOSP) w/15 (“Johnson & Johnson” OR “Johnson and Johnson” OR J&J OR JnJ OR JJHCS OR Janssen)) w/5 (revenue OR sales OR profits OR “return on investment” OR “ROI”)
- (“don’t” OR “not” OR allowed OR never OR permit OR “can’t” OR cannot) W/5 (mention OR disclose OR say OR inform* OR divulge) W/15 (SaveOn OR SaveOnSP OR SOSP OR Save On OR manufacturer* OR mfgr* OR program)
- (Accredo OR “accredo.com”) W/30 (agr* OR contract OR memor* OR fee* OR shar* OR relat*)
- (adher* OR complian* OR comply* OR discontinue*) W/10 (trend* OR rate* or stat*)
- (avoid* OR conceal*) AND (co-insurance OR variable OR copay OR “co-pay”)
- (Business w/15 plan) OR “Business plan”
- (chang* or edit*) W/25 website
- (copay* OR co-pay* OR coins* OR co-ins* OR “cost share” OR “specialty med*” OR “specialty drug*” OR biolog* OR infus*) W/15 (OR transfer* OR reduc* OR saving*)
- (copay* OR co-pay* OR coins* OR co-ins* OR “cost share”) W/15 (zero OR 0 OR \$0 OR “no cost” OR “free of charge”)

¹² Unless otherwise noted, these time period applicable for these terms is April 1, 2016 to November 7, 2023.

- (copay* OR co-pay* OR coins* OR co-ins* OR “out of pocket” OR OOP OR bucket* OR “ingredient cost”) W/30 (infla* OR increase)
- (counter* OR strateg* OR “course correct” OR “bypass” OR respon* OR solution OR solv*) W/25 (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi OR **Novartis**)
- (detect* OR evade* OR avoid* OR hide OR conceal*) AND (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi OR **Novartis**)
- (detect* OR evade* OR avoid* OR hide OR conceal*) W/15 (manufacturer*)
- **(detect* OR evade* OR hide OR conceal*) AND (co-insurance OR coinsurance OR variable)**
- (ESI OR “Express Scripts” OR Evernorth) w/15 (fee* OR ((master w/2 agreement) OR assistance OR “copay card” OR “co-pay card” OR “savings card” OR enroll* OR accumulat* OR maximiz*))
- (exhaust* OR drain* OR complain*) w/ 15 (co-pay OR copay* OR support* OR cover*)
- (FirstView OR “First View”) w/10 card
- (FirstView OR “First View”) AND (credit w/2 card)
- (inc* W/10 (save* OR saving*) W/15 manuf* OR assist*)
- (inclu* OR add* OR remov* OR Structure) W/10 (benefit* OR “drug list”*)
- (manufacturer OR mfgr* OR Biogen OR Abbvie OR Amgen OR Vertex OR Exelixis OR Takeda OR Sanofi OR **Novartis**) w/25 (maximizer* OR accumulator* OR reduce* OR modif* OR change*)
- (Passthrough OR pass through* OR pass thru OR passthru OR passthru)
- (patient* OR member*) W/5 (adher* OR complian* OR comply* OR discontinu*)
- **(Premera AND (“drug list” OR list)) W/25 (Janssen OR JJHCS OR Erleada OR Simponi OR Stelara OR Tremfya OR Zytiga)¹³**

¹³ SaveOnSP agreed to run this term over Melanie Jerred’s custodial documents from July 1, 2022 to October 1, 2023.

- (Premera AND (remove OR change)) W/25 (Janssen OR JJHCS OR Erleada OR Simponi OR Stelara OR Tremfya OR Zytiga)¹⁴
- (therap* or drug* OR medication) w/15 (adhere* OR continu* OR discontinu*)
- (therap* OR drug* OR medication) w/15 (transition OR “same class” OR “same category”)
- “@express-scripts.com”¹⁵
- “@notionpartners.com”
- “Affordable Care Act” OR ACA
- “DARZALEX FASPRO” OR DARZALEX OR daratumumab OR hyaluronidase*
- “Intergovernmental Personnel Benefit Cooperative” OR IPBC OR (Rachel W/2 Harmon) OR rharmon@expressscripts.com OR ((presentation OR training OR video) W/5 (ESI OR “Express Scripts”))
- “Johnson & Johnson” OR “Johnson and Johnson”
- “Lash Group”
- “non-med* switch*” OR “nonmed* switch*” OR ((patient OR non-med*OR nonmed*) W/15 switch*) OR “switch rationale” OR “switch card” OR “economic switch*” OR (“force* or mandate*” w/5 switch*)
- “open enrollment” OR ((summar* OR term) W/30 (program* OR plan* OR benefit* OR coverage* OR coinsurance OR deductible OR OOP OR “out-of-pocket”))
- “SaveOnSP Program Impacted” OR (Premera W/15 (article OR alert* OR news*)) OR (“close*” W/15 (“business OR “customer*))
- “strategic steering committee” OR “steering committee” OR (strateg* w/10 (monthly OR meet*))
- “strategy plan” OR (strategy /15 plan) OR “monthly plan” OR (monthly /15 plan) OR “transition plan” OR (growth /15 plan)
- “Summary of Benefits”

¹⁴ SaveOnSP agreed to run this term over Melanie Jerred’s custodial documents from July 1, 2022 to October 1, 2023.

¹⁵ For the period December 2015 through August 31, 2016. Unless otherwise noted, the terms listed above do not have a date limitation.

- “Summary Plan”
- Accredo W/15 (transfer* OR assistance OR “savings card” OR “copay card” OR “co-pay card” OR enroll* OR accumul* OR maximiz*)
- analy* OR “white paper*” OR “research” OR report* OR publication* OR review* OR article* OR study OR studies W/15 “specialty med*” OR “specialty drug*” OR biolog* OR infus* or accumul* OR maximizer* OR copay* OR co-pay* OR coins* OR co-ins*
- BALVERSA OR erdafitinib
- benchmark* /10 (plan OR state OR EHB OR essential* OR NEHB or nonessential* OR non-essential*)
- bi-weekly W/2 (call* OR meeting*)
- care W/2 path
- CarePath OR Carpath OR Carepth
- **Cobicistat**
- **Darunavir**
- EJRA AND emilyjreckinger@gmail.com
- email W/10 template
- **Emitricitabine**
- ERLEADA OR apalutamide
- <https://www.saveonsp.com>* OR www.saveonsp.com* OR “reduce this exorbitant cost” OR “we offer an innovative specialty solution” OR “is committed to making expensive medications more affordable for companies” OR “modifying their plan design” OR “how will our plan see savings generated”
- IMBRUVICA OR ibrutinib
- its.jnj.com
- J&J or JNJ
- Janssen OR Jannsen OR Jansen OR Jannssen
- JJHCS OR JHCS or JJCHS OR JJHS

- manufacturer* w/10 (maximizer* OR accumulator*)
- OPSUMIT OR macitentan
- Prezcobix
- QuestEx
- Reject* w/2 73
- REMICADE OR infliximab
- RYBREVANT OR amivantamab*
- SIMPONI OR golimumab
- STELARA OR ustekinumab
- structure* W/4 (benefit* OR “drug list”)
- Symtuza
- Tenofovir Alafenamide
- TRACLEER OR bosentan
- TREMFYA OR guselkumab
- TrialCard OR “Trial Card”
- UPTRAVI OR selexipag
- Ventavis OR iloprost
- ZYTIGA OR abiraterone

EXHIBIT 5



February 14, 2024

Harry Sandick
Partner
(212) 336-2723
hsandick@pbwt.com

By Email

Hon. Freda L. Wolfson
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, NJ 07068

**Re: JJHCS's Opposition to SaveOnSP's February 7 Motion to Compel
Johnson and Johnson Health Care Systems, Inc. v. Save On SP, LLC
No. 2:22-cv-02632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of Johnson & Johnson Health Care Systems, Inc. ("JJHCS"), we write in opposition to the February 7, 2024 letter motion by Defendant Save On SP, LLC ("SaveOnSP") seeking to "resolve a potential ambiguity" in the Court's November 7, 2023 Order (Dkt. No. 173).

There is no ambiguity in the Court's Order. That Order directed JJHCS to fashion

a search designed to capture documents wherein the terms 'CAP A,' 'CAP M,' or 'adjustment program' (or reasonable variations of those terms) are found in the same documents as the term 'SaveOn' (or reasonable variations / abbreviations).

There is nothing unclear about this instruction. In fact, as detailed below, SaveOnSP agreed ***on the record*** to accept the narrower string that the Court imposed. SaveOnSP should not be permitted to endlessly relitigate issues that the Court has ruled upon. Your Honor should deny SaveOnSP's motion and should leave Judge Waldor's clear ruling with respect to Dkt. No. 166 in place.

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February 14, 2024
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I. Judge Waldor Directed JJHCS to Review Documents Wherein the Terms “CAP A,” “CAP M,” or “Adjustment Program” Appear in the Same Document as SaveOnSP

In its October motion, [REDACTED]

[REDACTED] See Dkt. No. 166.

At the October conference, Judge Waldor considered SaveOnSP’s request for the July 1, 2022 to present time period, and ultimately compelled JJHCS to review only those documents that hit the terms “CAPa” OR “CAPm” OR “adjustment program” *and* “the term ‘SaveOn’ (or reasonable variations / abbreviations).” Dkt. No. 173 at 2–3.¹ At the conference, SaveOnSP counsel made the same arguments it now makes to Your Honor about whether JJHCS should only review documents that mention SaveOnSP. SaveOnSP’s counsel repeatedly argued against the inclusion of the SaveOnSP modifier. First, SaveOnSP asked that the Court require JJHCS to review all documents with any reference to “maximizers” or “accumulators,” regardless of whether those documents mentioned SaveOnSP. See Oct. 30. Tr. at 101:20–22. Then he argued that the term “*and* SaveOn” should be replaced with “*or* SaveOn,” which would have broadened the scope of the search to include literally every document that mentioned SaveOnSP. See *id.* at 102:2–3.

Rejecting SaveOnSP’s arguments, Judge Waldor repeatedly and unequivocally declined to order JJHCS to review documents that did not mention SaveOnSP. On at least three

¹ JJHCS has followed this ruling to the letter. In fact, SaveOnSP has never once objected to the “reasonable variations” of the search terms JJHCS proposed months ago to fulfill its discovery obligations. See JJHCS Exhibit A (Nov. 28, 2023 Ltr. from J. Long to M. Nelson at 2); JJHCS Exhibit B (Dec. 22, 2023 Ltr. from J. Long to E. Snow at 3–4).

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occasions, she ordered that the SaveOn search term be used. *See id.* at 101:10 (“THE COURT: *I’m going to order that they search CAP A and CAP M and adjustment programs but related to SaveOn.*” (emphasis added)); *id.* 102:11–15 (rejecting SaveOnSP’s request for “*or*” SaveOn); *id.* 102:24–103:4 (ruling that the documents must be “[*r*]elated to SaveOn. *Qualified by SaveOn.*”). Judge Waldor similarly considered and ultimately rejected SaveOnSP’s argument that, because JJHCS employees “don’t always use the word ‘SaveOn’ or ‘SOSP’” and instead use the phrases “ESI’s maximizer” or “maximizer program[,]” those terms should be added to the CAP search string. *Id.* at 105:16–106:6.²

On the record and after lengthy argument before Judge Waldor, SaveOnSP’s own counsel agreed that documents “talking about SaveOn” would be “sufficient” for SaveOnSP’s motion:

THE COURT: What was the agreement you suspect we might have arrive at?

MR. ELSBERG: Yeah, so this is what I’m thinking, Your Honor. We could -- we could agree to do what counsel just said except instead of saying within the same sentence, *I think it’s fair to say SaveOn and variations on it, if it’s in the same document, we should get the document, because it’s talking about SaveOn.* It doesn’t need to be in the sentence. It could be three paragraphs later. It could be the next page.

THE COURT: Okay. That’s an agreement. You’ve just agreed to that.

MR. ELSBERG: And, Your Honor, I would then say I hope that’s going to be sufficient. And --

THE COURT: Well, I don’t want to talk about what-ifs or tomorrow.

² SaveOnSP’s argument that the “*and SaveOn*” term would not lead to review of certain documents is not new. SaveOnSP presented this argument to Judge Waldor at the October 30 conference and Judge Waldor was unpersuaded. *See* Oct. 30 Tr. at 101:10–108:23.

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MR. ELSBERG: Fine.

THE COURT: And let's not get hyperbolic about anything in terms of what that's going to uncover and produce because *the points that's really being [made] here is there's going to be a stop at some point. There is got to be.* So let's just minimize -- minimize -- let's do the search that was suggested if CAP M and CAP A.

MR. ELSBERG: And adjustment program.

THE COURT: And adjustment programs.

MR. ELSBERG: *With variations of SaveOn in the document.*

THE COURT: *And that's an agreement. Right?* Yes. Okay. Good.

MR. ELSBERG: *All right.* Thank you, Your Honor.

Oct. 30 Tr. at 107:21–108:23 (emphasis added). SaveOnSP never sought clarification or timely moved for reconsideration of the issue before Judge Waldor, either immediately after the October 30, 2023 conference, or after Judge Waldor issued her order on November 7, 2023. Nor could it, given that it expressly agreed to accept that limitation. SaveOnSP's expansive reinterpretation of the Court's November 7 Order cannot be reconciled with the Court's November 7 Order, which is unambiguous.

Nor should Your Honor credit SaveOnSP's claim that there is some internal inconsistency in Judge Waldor's order in light of her ruling that the parties needed to update their discovery responses through November 7. First, the November 7 Order (issued after the October 30 colloquy above) maintained the SaveOnSP limiter with respect to CAP, even as Judge Waldor ordered a full refresh. Second, if SaveOnSP truly believed these rulings created an "ambiguity," SaveOnSP had no reason to delay raising this issue for more than three months.

We pause to note that this is not the first time that SaveOnSP has sought to relitigate Judge Waldor's prior orders based on incorrect and improbable interpretations of those orders.

Hon. Freda L. Wolfson
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Judge Waldor even recognized this at the October 30 conference—ironically, during SaveOnSP’s argument on this same issue, when she correctly predicted that SaveOnSP would try to return to the well even after she rejected SaveOnSP’s position. *See* Oct. 30 Tr. at 108:11–14 (“Let’s not get hyperbolic about anything in terms of what that’s going to uncover and produce because the point[] that’s really being [made] here is there’s going to be a stop at some point. There is got to be.”). Yet, rather than heeding this admonition by Judge Waldor, SaveOnSP is simply now redirecting that same hyperbole to Your Honor. Your Honor should reject this approach to discovery and deny SaveOnSP’s motion.

II. There Is No Basis to Revisit Judge Waldor’s Ruling

In the alternative, SaveOnSP claims that “documents produced since the October 30 conference would provide ample grounds to reconsider that decision.” Despite the parties’ having met and conferred on the “CAP” search terms several times, SaveOnSP never raised this argument with us. *See* JJHCS Exhibit C (Jan. 5, 2024 Ltr. from E. Snow to J. Long); JJHCS Exhibit D (Jan. 11, 2024 Ltr. from J. Long to E. Snow). Had SaveOnSP raised the “new evidence” with JJHCS prior to moving before Your Honor, JJHCS would have addressed the purported relevance of the documents SaveOnSP now claims are “highly relevant” to the parties’ claims and defenses.

For example, although SaveOnSP claims that its requested search string is essential to capture documents like Exhibit 3, which [REDACTED]

[REDACTED] this is flatly incorrect. JJHCS already has agreed to produce—and indeed has produced—monthly “CAP Reporting” through November 7, 2023 from non-custodial sources.

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See JJHCS Exhibit E (JJHCS_00139021) and JJHCS Exhibit F (JJHCS_00139023). But even absent that agreement, the same documents would have been produced using the very search terms that Judge Waldor’s November 7 Order is meant to capture, because since May 2022 these reports have expressly included the term “SaveOn SP,” and so would be picked up by the search string Judge Waldor ordered. See JJHCS Exhibit G (JJHCS_00000404) ([REDACTED]). In other words, the more recent versions of the same report would be captured by the term ordered by Judge Waldor in the November 7 Order.

SaveOnSP’s exhibits also belie its claims of “ample” new evidence on this point to revisit Judge Waldor’s directive. There is nothing new about many of the documents on which SaveOnSP relies in its motion. Despite SaveOnSP’s protestations that new productions “since the October 30 conference” warrant revisiting the issue, JJHCS first produced versions of the “highly relevant” monthly CAP reporting in Exhibit G (JJHCS_00000404) on March 3, 2023, nearly a year ago. SaveOnSP had every ability to review this production for seven months before Judge Waldor issued the November 7 Order.

SaveOnSP’s remaining citations, relegated to a string cite in a footnote, fare no better. SaveOnSP baldly claims that these documents are “relevant to mitigation and acquiescence” but makes no arguments about how these documents support their motion. This omission is telling. For example, Exhibit 4 (JJHCS_00142279) has nothing to do with the claims or defenses in this litigation [REDACTED]

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[REDACTED] See Exhibit 4 (JJHCS_00142279). It is thus of no consequence that this document contains the search term “adjustment program” without a SaveOnSP limiter.

Similarly, Exhibit 11 (JJHCS_00139311), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Simply put, nothing in Exhibit 11 supports SaveOnSP’s purported defenses, nor does Exhibit 11 weigh in favor of additional search terms. Accordingly, Judge Waldor’s “SaveOnSP” limiter should be kept in place, and the rulings she made on this issue after extended oral argument should not be disturbed.

* * *

Having produced more than 56,000 pages of documents (excluding those produced in native formats) on CAP issues and the discovery refresh since December 22, 2023, JJHCS did what it was ordered to do. At the October 30 conference, as memorialized in the Court’s November 7 Order, Judge Waldor directed JJHCS to run the search terms “CAPa” OR “CAPm” or “adjustment program” to capture all documents also containing the term “SaveOnSP” (or reasonable variations thereof). There is no ambiguity in the Court’s Order and no reason to re-open an issue that Judge Waldor directly considered and decided. SaveOnSP already agreed *on the record* to accept the limitation that the Court imposed and should be held to its agreement.

We appreciate Your Honor’s attention to this matter, and we are available to answer any questions.

Hon. Freda L. Wolfson
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Respectfully submitted,

/s/ Harry Sandick

Harry Sandick

cc: Counsel for SaveOnSP

EXHIBITS 6-9
CONFIDENTIAL – FILED
UNDER SEAL

Exhibit 10

Selendy Gay Elsberg PLLC
1290 Avenue of the Americas
New York NY 10104
212.390.9000



Elizabeth Snow
Associate
212 390 9330
esnow@selendygay.com

January 29, 2024

Via E-mail

Julia Long
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
jlong@pbwt.com

Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC (Case No. 2:22-cv-02632-JKS-CLW)*

Dear Julia,

We write to propose search terms for the custodians discussed at and ordered to be added at during the January 24, 2024 conference in front of Special Master Wolfson.

First, as to Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt, Judge Wolfson ordered SaveOn to propose a set of search terms that relate to the CAP program and to discussions regarding J&J's response to SaveOn, accumulators, and maximizers, Tr. at 107:1-111:10, to be run for the full discovery period of April 1, 2016 through November 7, 2023, *id.* 108:21-109:18. SaveOn proposes these terms in Exhibit 1.

Second, as to Scott White, Blasine Penkowski, and Karen Lade, Judge Wolfson ordered J&J to add them as custodians for the full time period and ordered SaveOn to propose targeted search terms for each new custodian. Tr. 128:9-129:13, 131:22-132:13. SaveOn's proposes these terms in Exhibits 2-4.

Third, as to Savaria Harris and Jennifer De Camara, Judge Wolfson ordered that J&J add them as custodian and ordered that SaveOn propose a set of search terms to be run over their communications with third parties from January 1, 2021 through November 7, 2023. Tr. 54:12-23. SaveOn proposes these terms in Exhibit 5.

Julia Long
January 29, 2024

Please let us know by February 2, 2024 if J&J will agree to run these proposed search terms. If J&J objects to running any search term, please provide hit counts that identify the total number of unique documents identified by SaveOn's proposed terms, both individually and in the aggregate.

We reserve all rights and are available to meet and confer.

Best,

/s/ Elizabeth Snow

Elizabeth H. Snow
Associate

Exhibit 1

JJHCS v. SaveOnSP

Search Terms for Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“essential health benefit*” OR EHB* OR “non-essential health benefit” OR “nonessential health benefit*” OR NEHB*
(essential OR nonessential OR non-essential OR “non essential”) w/50 (“Affordable Care Act” OR ACA OR Obamacare)
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“other offer” W/5 (accumulat* OR maximiz*)
CAPa
CAPm
“adjustment program”
(CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP)
(“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (<i>case sensitive</i>)

Exhibit 2

JJHCS v. SaveOnSP
Search Terms for Scott White
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
(“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))

Exhibit 3

JJHCS v. SaveOnSP
Search Terms for Blasine Penkowski
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
(“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))
(brand* OR finance* OR “SCG” OR (strategic /5 customer)) AND (accumulat* OR maximiz*)
((lose* OR loss* OR (return w/4 investment) OR “ROI” OR (negative w/5 impact) OR (gross w/5 impact) OR (net w/5 impact) OR (GTN w/5 impact)) w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe”)) AND (“Save On” OR SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR accumulat* OR maximiz*)
Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
(((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Uptravi OR Ventavis OR Zytiga)

Exhibit 4

JJHCS v. SaveOnSP
Search Terms for Karen Lade
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Uptravi OR Ventavis OR Zytiga)
Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
“other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
(accumulator /5 prog*)
PBM* AND (copay* or co-pay*) AND deductible
(Max* /15 benefit*) AND (\$20,000 OR \$20K OR 20k)

Exhibit 5

JJHCS v. SaveOnSP
Search Terms for Savaria Harris & Jennifer De Camara
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“other offer” W/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
(eligib* or ineligib*) AND “out-of-pocket cost”
(maximiz* OR optimiz*) AND (\$6,000 OR “maximum program benefit”)
(\$6,000 OR \$6k OR 6k OR \$9,100 OR \$8,900 OR (OOP) OR (out-of-pocket)) AND (Stelara OR Tremfya)
(Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term* w/3 condition) OR “T&C” OR “TNC” OR “other offer”)
(“coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*”) AND (accumulat* OR maximiz* OR “health plan*” OR insur* OR OR Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program” OR program)

Exhibit 11



February 15, 2024

Julia Long
(212) 336-2878

VIA EMAIL

Elizabeth H. Snow, Esq.
Selendy Gay, PLLC
1290 Avenue of the Americas
New York, NY 10104

**Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC,*
2:23-cv-02632 (JKS) (CLW)**

Dear Elizabeth:

We write in response to SaveOnSP's January 29, 2024 letter regarding search terms for the new custodians added during the January 24, 2024 conference before Judge Wolfson as well as new search terms for the "CAP" custodians.

I. CAP Custodians

SaveOnSP's January 29 letter requests that JJHCS add thirteen search terms that it contends "relate to the CAP program" and concern "discussions regarding J&J's response to SaveOn, accumulators, and maximizers" for Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt (the "CAP" Custodians) for the period April 1, 2016 to November 7, 2023. *See* Jan. 29, 2024 Ltr. from E. Snow to J. Long at 1.

SaveOnSP's proposed search terms go well beyond Judge Wolfson's order, which only required JJHCS to "use CAP-related search terms, including terms that capture discussions by the custodians prior to the creation of the CAP program." Dkt. No. 192 at 26. In keeping with the Court's order, JJHCS agrees to add the following search strings for the time period April 1, 2016 to November 7, 2023:

- (CAPa OR CAPm OR "adjustment program") AND (SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSp)
- ("CAPa" OR "CAPm" OR "adjustment program") AND "Save On" (*case sensitive*)

To the extent SaveOnSP also seeks the addition of the term "CAPa" OR "CAPm" OR "adjustment program," without a SaveOnSP limiter, this proposal is inconsistent with the Court's November 7, 2023 Order. (*See* Dkt. No. 173 at 2-3.) In addition, SaveOnSP now has made an additional motion

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to Judge Wolfson to expand the scope of the November 7, 2023 Order. For the reasons discussed in JJHCS's opposition brief filed on February 14, SaveOnSP has no basis to relitigate the November 7, 2023 Order. For the avoidance of doubt, should Judge Wolfson expand the scope of the Court's November 7 Order with respect to the CAP search terms, JJHCS will adopt that application to the CAP custodians for the full time period as well.

As a compromise, JJHCS is prepared to run the following terms:

- SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSp OR "Jody Miller" OR "Ron Krawczyk"
- "Save On" (*case sensitive*)
- "save on" w/50 (accumulat* OR maximiz* OR "essential health benefit*" OR EHB* OR "non-essential health benefit*" OR "nonessential health benefit*" OR NEHB* OR accredo OR ESI OR "express scripts")
- "other offer" W/5 (accumulat* OR maximiz*)
- ("Express Scripts" OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)

However, JJHCS declines to run the following search terms, which have no relation to JJHCS's CAP-related efforts. Indeed, SaveOnSP acknowledged the lack of any connection during the parties' February 12, 2024 meet and confer, when SaveOnSP claimed these terms describe SaveOnSP's "business model." As SaveOnSP well knows, the Court did not direct further discovery on that issue.

- "essential health benefit*" OR EHB* OR "non-essential health benefit" OR "nonessential health benefit*" OR NEHB*
- (essential OR nonessential OR non-essential OR "non essential") w/50 ("Affordable Care Act" OR ACA OR Obamacare)

II. Scott White and Blasine Penkowski

SaveOnSP's letter also requests search terms to be added with respect to two apex custodians, Scott White and Blasine Penkowski. As to Mr. White and Ms. Penkowski, JJHCS agrees to run the following terms:

- SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSp OR "Jody Miller" OR "Ron Krawczyk"
- "Save On" (*case sensitive*)

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- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)

JJHCS declines to run the “CAP” search term over Mr. White’s and Ms. Penkowski’s documents without a SaveOnSP limiter, for the reasons previously discussed, but will agree to run the following search strings for the full April 1, 2016 to November 7, 2023 period consistent with the Court’s November 7 Order:

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)

JJHCS also declines to run the following search terms over Mr. White’s and Ms. Penkowski’s documents, but will search for and produce final contracts and statements of work with Trial Card from non-custodial sources consistent with its January 29, 2024 responses and objections to SaveOnSP’s discovery requests:

- (“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))

Finally, JJHCS declines to add certain proposed financial-related terms, which SaveOnSP requested only as to Ms. Penkowski’s documents. As outlined in JJHCS’s February 8, 2024 letter, and as discussed during the parties’ February 12, 2024 meet and confer, SaveOnSP’s insistence that JJHCS produce these documents is inconsistent with Judge Wolfson’s February 6, 2024 Order. For example, as to issues concerning CarePath’s budget, Judge Wolfson concluded that “[JJHCS] has the better argument” and “communications of budgetary decisions are not relevant to Defendant’s defenses or Plaintiff’s claims.” Dkt. No. 192 at 19. Similarly, as to issues related to return on investment (or “ROI”), Judge Wolfson unambiguously rejected SaveOnSP’s arguments, finding that JJHCS’s “alleged harm is not related to the profitability of any Janssen drugs. Put differently, even if J&J and its [affiliates] ultimately derive profits . . . from selling the drugs at issue, that fact does not disprove Plaintiff’s alleged harm in this case, either to itself or to the public.” *Id.* at 22.

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Accordingly, JJHCS will not run the following terms:

- (brand* OR finance* OR SCG OR (strategic w/5 customer)) AND (accumulat* OR maximiz*)
- ((lose* OR loss* OR (return w/4 investment) OR “ROI” OR (negative w/5 impact) OR (gross w/5 impact) OR (net w/5 impact) OR (GTN w/5 impact)) w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe”)) AND (“Save On” OR Save-OnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR accumulat* OR maximiz*)
- Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
- ((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)

As discussed during the parties’ February 12, 2024 meet and confer, SaveOnSP’s proposal of these terms demonstrates that SaveOnSP refuses to accept the Court’s rulings on an issue already twice litigated—and on which JJHCS has twice prevailed. JJHCS will not provide hit counts for these searches, as they seek documents that are beyond the scope of what Judge Wolfson ordered. If SaveOnSP is willing to meet and confer in good-faith and to propose search terms related to the “small window” that Judge Wolfson opened with respect to budget and financials issues, JJHCS will run SaveOnSP’s requested search terms and provide hit counts, as appropriate. *See* Feb. 8, 2024 Ltr. From J. Long to E. Snow at 2-3.

III. Karen Lade

SaveOnSP proposed thirteen search terms with respect to Ms. Lade’s documents. JJHCS agrees to run the following search terms:

- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
- “Save On” (*case sensitive*)
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)

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- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
- “other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
- accumulator w/5 prog*

For the reasons cited above, JJHCS declines (1) to run the “CAP” search term over Ms. Lade’s documents without a SaveOnSP limiter; and (2) to run financial-related search strings over Ms. Lade’s documents.¹ As with Mr. White and Ms. Penkowski, JJHCS agrees to run the following terms with respect to the CAP program for the April 1, 2016 to November 7, 2023 time period:

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)

As discussed at the parties’ February 12, 2024 meet and confer, JJHCS will consider running two final Lade-specific search strings if those are modified to capture the documents SaveOnSP explained it was seeking. JJHCS offers to run these modified terms, subject to SaveOnSP’s agreement that these strings resolve SaveOnSP’s requests with respect to these strings.

SaveOnSP Proposal	JJHCS Modification
PBM* AND (copay* or co-pay*) AND deductible	PBM* w/50 ((chang* OR increas* OR decreas*) AND (copay* OR co-pay*) AND deductible)

¹ JJHCS declines to run the following financial-related strings, which are beyond the scope of Judge Wolfson’s order:

- ((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcoibix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)
- Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))

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(Max* /15 benefit*) AND (\$20,000 OR \$20K OR 20k)	(Max* /15 benefit*) w/50 ((chang* OR increas* OR decreas*) AND (\$20,000 OR \$20K OR 20k))
----------------------------------------------------	--------------------------------------------------------------------------------------------

IV. Savaria Harris and Jennifer De Camara

Judge Wolfson ordered production from Ms. Harris and Ms. De Camara’s custodial files on a single, narrow issue: (1) documents and communications between the attorneys and any third-party entities *and* (2) that concern the “new terms and conditions for both its Stelara and Tremfya medications” implemented in January 2022. Dkt. No. 192 at 13-14. SaveOnSP’s requested terms go well beyond these limitations.

For example, SaveOnSP continues to insist on documents with any reference in which “coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*” appear in the same document as the terms “Janssen” or “CarePath” (or variations thereof)—despite Judge Waldor explicitly rejecting that a narrower version of that term at the January 24, 2024 conference. Jan. 24 Tr. at 35:3-37:1 (“MR. SANDICK: Your Honor, Mr. Dunlap said a moment ago words to the effect of, we’re not looking for every time that somebody mentioned discount or coupon, but the search terms that they proposed even after Judge Waldor ordered them to narrow their request are exactly what Mr. Dunlap just said -- JUDGE WOLFSON: It’s not going to happen.”). Accordingly, JJHCS declines to run the following terms:

- (“coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*”) AND (accumulat* OR maximiz* OR “health plan*” OR insur* OR OR Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program” OR program)
- (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term* w/3 condition) OR “T&C” OR “TNC” OR “other offer”)

For the same reason, JJHCS also declines to run the following terms, which are not designed to capture documents concerning the “new terms and conditions for both its Stelara and Tremfya medications”:

- Save On” (*case sensitive*)
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”

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- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)

JJHCS agrees to the remainder of SaveOnSP’s proposed terms for the period proposed by SaveOnSP (January 1, 2021 to November 7, 2023), so long as those documents also mention Stelara and Tremfya (as modified in red font below):

- “other offer” W/5 (accumulat* OR maximiz* OR “health plan*” OR insur*) AND (Stelara OR Tremfya)
- (eligib* or ineligib*) AND “out-of-pocket cost” AND (Stelara OR Tremfya)
- (maximiz* OR optimiz*) AND (\$6,000 OR “maximum program benefit”) AND (Stelara OR Tremfya)
- (\$6,000 OR \$6k OR 6k OR \$9,100 OR \$8,900 OR (OOP) OR (out-of-pocket)) AND (Stelara OR Tremfya)

In addition, JJHCS will consider running the following terms for the period proposed by SaveOnSP (January 1, 2021 to November 7, 2023), subject to SaveOnSP’s agreement that these modifications will resolve SaveOnSP’s requests with respect to Ms. Harris and Ms. De Camara:

- (Stelara OR Tremfya) W/25 ((term* w/3 condition*) OR “T&C*” OR “other offer”))

* * *

JJHCS remains available to meet and confer with respect to SaveOnSP’s proposed search terms.

Very truly yours,

/s/ Julia Long
Julia Long

EXHIBIT 12



January 22, 2024

Harry Sandick
Partner
(212) 336-2723
hsandick@pbwt.com

By Email

Hon. Freda L. Wolfson
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, NJ 07068

**Re: JJHCS's Opposition to SaveOnSP's January 16 Motion to Compel
Johnson and Johnson Health Care Systems, Inc. v. SaveOnSP, LLC
No. 2:22-cv-02632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of Johnson & Johnson Health Care Systems, Inc. ("JJHCS"), we write in opposition to the January 16, 2024 letter motion by Defendant SaveOnSP, LLC ("SaveOnSP") seeking additional relief on the six "CAP custodians" that were the subject of previous motion practice and Judge Waldor's November 7, 2023 order.

Once again, SaveOnSP is making motions that misstate the record and seek the production of documents that go well beyond what was previously briefed and decided. SaveOnSP asked Judge Waldor to compel JJHCS to produce additional discovery relating to its "CAP program," beginning in 2021, including through custodians who SaveOnSP insisted were "likely to have unique documents relating to the CAP program." D.E. 165 at 7–8; D.E. 166 at 2–3. At oral argument on October 30, SaveOnSP explained that it sought the designation of "seven custodians who we specifically identified as related to the CAP program," as well as CAP-focused search terms covering a "year and a half," starting "in 2022"—as counsel acknowledged, "we are not talking about a very long time period here." Oct. 30 Tr. at 76:3–78:20. Judge Waldor granted

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some but not all of the CAP-focused relief SaveOnSP sought. She decided to “open the doors on CAP,” directed JJHCS to add six custodians “with respect to the CAP program,” and even provided search parameters and a time period of “January 1, 2022 through the present” for additional CAP discovery. *See* Oct. 30 Tr. at 56:1; D.E. 173 at 2–3. JJHCS has followed this ruling to the letter.

Yet now SaveOnSP claims that Judge Waldor actually wanted JJHCS to produce documents from these “CAP custodians” not just about the CAP program, but on all manner of topics going back to April 1, 2016—*five years* before the CAP program began. SaveOnSP’s expansive reinterpretation is inconsistent with its own previous arguments and irreconcilable with Judge Waldor’s ruling. Indeed, this is the third letter brief to Your Honor in which SaveOnSP has claimed to construe Judge Waldor’s intent while studiously avoiding any citation to the October 30 conference, at which these very issues were discussed for several hours. That omission is telling. The full record shows that Judge Waldor granted limited relief as to the CAP program and related custodians; there is no basis to disturb her ruling. Accordingly, Your Honor should deny SaveOnSP’s motion. SaveOnSP should focus its considerable energies not on meritless discovery motions but rather on timely completing its own discovery obligations without further delay or distraction.

I. SaveOnSP Sought Narrow Relief Related to the CAP Program

SaveOnSP asked Judge Waldor to compel JJHCS to add certain custodians due to their ostensible involvement in the “CAP Program,” beginning “in or around 2021”—in particular, because SaveOnSP insisted that documents about the CAP program were “crucial.” D.E. 165 at 7–8. The relevant portion of SaveOnSP’s motion is excerpted below:

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CAP Program

As described in more detail in a forthcoming submission. [REDACTED]

[REDACTED] Ex. 74 (JJHCS_00133549) [REDACTED]

[REDACTED] Ex. 75 (JJHCS_00040622) [REDACTED]

[REDACTED] Ex. 12 (JJHCS_00041215). As part of this program, JJHCS changed CarePath's terms and conditions ("T&Cs") applicable to its drugs Stelara and Tremfya to (1) reduce the maximum amount J&J would pay patients who were members of maximizers from \$20,000 to \$6,000, and (2) eliminate payments to patients "who are members of health plans that claim to eliminate their out-of-pocket costs."⁵ See, e.g. Dkt. No. 31-7. [REDACTED]

[REDACTED] (JJHCS_0003353). Documents regarding these efforts—both actions taken and not taken—are crucial to SaveOnSP's mitigation and acquiescence defenses. See Aff. Defs. ¶¶ 24-29.

Id. (highlighting supplied).

SaveOnSP then repeated this rationale as to the individual custodians—that each was “likely to have unique documents regarding the CAP program,” which, again, was created “in or around 2021.” See, e.g., *id.* at 8 (“Kinne is likely to have unique documents regarding the CAP program”), 9 (“Longbothum is likely to have unique documents regarding the CAP program”), *et seq.* And SaveOnSP expressly linked its motion to a “forthcoming submission,” i.e., a follow-on SaveOnSP motion on the same subject of CAP program discovery:

SaveOnSP Motion, D.E. 165, at p. 7	SaveOnSP Motion, D.E. 166, at pp. 2–3
As described in more detail in a forthcoming submission, in or around 2021, JJHCS created its CAP program as part of an effort to respond to accumulators and maximizers...	In or around 2021, J&J created a program called a “cost adjustment program” or “copay adjustment program” (“CAP”), as part of an effort to “adjust” the amount of copay assistance payments that J&J made to patients who were on accumulators and maximizers....

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II. Judge Waldor Addressed and Resolved Both CAP Motions Together, Ordering Narrower Relief than SaveOnSP Sought

Because SaveOnSP had filed two motions on the same topic, Judge Waldor chose to address them together, and took up SaveOnSP’s requested “CAP custodians” during an extended colloquy about what JJHCS should produce “in terms of CAP.” *See* Oct. 30 Tr. at 54:8–56:6 *et seq.* As part of that colloquy, after SaveOnSP’s counsel described his request for CAP-focused search terms, he characterized SaveOnSP’s ask as modest and focused:

MR. ELSBERG: ...the CAP program started in -- thank you -- in 2022. So we are not talking about a very long time period here.

THE COURT: So in terms of search terms for CAP A, CAP M, and adjustment programs, it's 2022 through today.

MR. ELSBERG: Yes. It's 2022 through whatever date it is that they're seeking damages.

Id. at 77:4–12. Judge Waldor then again sought to confirm the CAP relief SaveOnSP requested as to the so-called CAP custodians. *Id.* at 77:16–17 (“THE COURT: What about these seven custodians that we were talking about before?”). Notably, SaveOnSP’s counsel did *not* say that the seven employees were relevant to issues other than CAP, or that Judge Waldor should compel JJHCS to produce documents from them going back five years before the CAP program began. Just the opposite: SaveOnSP’s entire argument was that these employees should be added because they were “*specifically identified as related to the CAP program,*” and asked Judge Waldor to grant the motion as to the “six custodians where we have strong evidence of their [involvement] in CAP.” *Id.* at 77:21–20 (emphasis supplied).

It is in this context—an extended discussion of CAP-related discovery across two overlapping motions—that Judge Waldor’s November 7 order arose. In that order, she directed

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JJHCS to add “six of the custodians that SaveOnSp identified with regard to the CAP program,” as SaveOnSP’s counsel had specifically requested. D.E. 173 at 2. And she ordered JJHCS to run specific “custodial document searches,” directly tied to the CAP-related terms discussed at the conference,¹ for the narrow time period of “January 1, 2022 to the present.” *Id.* at 2–3.

Thus, SaveOnSP’s present insistence that the two motions were “separate” and that “Judge Waldor resolved them separately” is refuted by the record. This is why SaveOnSP completely ignores the October 30 transcript when it insists that Judge Waldor intended to order extremely broad discovery from these CAP custodians going back to 2016, five years before the CAP program began. One will search the October 30 transcript in vain for any evidence that this was Judge Waldor’s intent. Instead, she said the opposite: “I’m going to open the doors *on CAP*.” Oct. 30 Tr. at 56:1 (emphasis supplied).²

¹ Although it is not material to this dispute, for purposes of ensuring a clear record we note that SaveOnSP’s letter incorrectly describes the search string Judge Waldor ordered JJHCS to run. *See* SaveOnSP Jan. 16, 2024 Letter at 2 n.1. Citing its own previous motion, D.E. 166, SaveOnSP claims that Judge Waldor ordered JJHCS to run the terms listed in footnote 2 of its letter (“CAPa” OR “CAPm” or “adjustment program”). That is not accurate. In fact, Judge Waldor compelled a narrower search of only documents that hit those terms *and* “the term ‘SaveOn’ (or reasonable variations / abbreviations).” D.E. 173 at 2–3. This was another topic of discussion at the October 30 conference, with SaveOnSP’s counsel repeatedly trying to change the “*and* SaveOn” to “*or* SaveOn” to vastly broaden the scope of the search, and Judge Waldor repeatedly and unequivocally declining to do so. *See* Oct. 30 Tr. at 101:14–108:22.

² For this reason, SaveOnSP is not helped by its repeated reliance on a single line in D.E. 165, in which it asked the Court “to compel JJHCS to add the above twelve custodians and run all agreed-upon or Court-ordered search terms . . . over their files.” D.E. 165 at 15. Simply put, Judge Waldor did not grant that relief. Instead, she ordered JJHCS to produce documents from a smaller number of custodians “with regard to the CAP program” using the far narrower search parameters discussed above.

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III. There Is No Basis to Expand the Scope of Judge Waldor’s Ruling to Unrelated Topics and Irrelevant Time Periods

In the alternative, SaveOnSP seeks a do-over on the grounds that “these custodians have relevant documents that do not contain the terms that J&J says it will use.” SaveOnSP Jan. 16, 2024 Letter at 3. The do-over attempt is improper and the justification is a strawman. The real question—particularly now, as this case approaches its two-year anniversary—is whether the employees at issue would have *unique* relevant documents, i.e., documents that are not merely cumulative of what JJHCS has already produced from its sixteen full custodians. *See* Fed. R. Civ. P. 26(b)(2)(C)(i) (barring “unreasonably cumulative or duplicative” discovery); *Sugg v. Virtusa*, 2020 WL 6585872, at *2 (D.N.J. Nov. 10, 2020) (denying motion to compel where, as here, the existing custodians included “high-ranking executives in the company, as well as the heads of several relevant business groups,” and the movant failed to show that additional requested custodians had “any unique knowledge”). And the answer to the question whether this review would lead to unique documents is no: as JJHCS explained to SaveOnSP in March of 2023, when SaveOnSP first began asking for some of these employees to be added, we have no reason to believe that any of them would have unique, non-privileged documents or communications going back to 2016 that relate to the non-CAP issues in this lawsuit.³

³ SaveOnSP itself has observed that, even though JJHCS has designated sixteen “full” custodians, most of its custodial documents came from the files of a core group of four employees most directly involved in the relevant issues. *See* D.E. 165 at 2 (SaveOnSP complaining that “the vast majority” of JJHCS’s production “came from only *four* custodians or from noncustodial files”); *id.* at 16 (JJHCS explaining that “[i]f anything, this reflects simply that the relevant knowledge about SaveOnSP’s operations was limited to a small number of people at JJHCS, which is not surprising given SaveOnSP’s self-professed goal of operating in the shadows”). This prospect of diminishing returns is presumably why Judge Waldor rejected SaveOnSP’s blunderbuss demand for twelve more JJHCS custodians after the substantial completion deadline for document production had

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None of the exhibits to SaveOnSP's letter support a different conclusion. For starters, SaveOnSP has had some of the documents it now cites for more than ten months—they were part of JJHCS's very first custodial production—demonstrating how stale SaveOnSP's arguments are. These are documents that could have been presented to Judge Waldor by SaveOnSP in support of its prior motions; SaveOnSP chose not to do so. Moreover, in most of the email chains cited by SaveOnSP, the email involving the CAP custodian at issue is fully redacted for privilege. *See* Ex. 3 at -227; Ex. 5 at -963–64; Ex. 6 at -275. There is, of course, no good reason to add ever-more custodians whose relevant communications are privileged and therefore will not be produced regardless. All else aside, the fact remains that every single JJHCS document now cited by SaveOnSP was already produced from the files of at least one existing JJHCS custodian.⁴ Taken together, they confirm that SaveOnSP already has full coverage from JJHCS's existing custodians. There is no reason, other than harassment and delay, for SaveOnSP to demand more.

* * *

It is time for this case to move forward, and JJHCS is committed to making that happen. We expect to substantially complete JJHCS's production of documents by the end of January, so that the parties can meet the Court's fact discovery deadline of April 25, 2024. Unfortunately, SaveOnSP has no intention of meeting that deadline. After our last appearance

already elapsed, and instead directed JJHCS only to produce additional discovery that was specific to the CAP program.

⁴ SaveOnSP also attaches one document produced by a third party, [REDACTED]
[REDACTED]t—who is already a “full” JJHCS custodian.

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before Your Honor, SaveOnSP announced that it “intends” to substantially complete its own refresh production “by March 31, 2024.” That obviously will not leave the parties with enough time to complete all fact depositions by April 25 as the Court ordered. And the delay is the point. Every month that this litigation continues is another month that SaveOnSP is able to misappropriate millions of dollars from JJHCS’s patient assistance programs, harming patients and JJHCS alike. Indeed, SaveOnSP is only making a “refresh production” in the first place because it renounced the parties’ previous agreement on a cutoff date, and unilaterally insisted that custodial discovery must be carried forward into the present. *See, e.g.*, Oct. 30 Tr. at 97:14–98:2. Having eagerly sought out that obligation, SaveOnSP cannot use it as an excuse for noncompliance with yet another discovery deadline.

In light of this development, we request that Your Honor direct SaveOnSP to substantially complete its production by February 15, so that depositions can proceed and fact discovery can finally end. SaveOnSP has ample resources to meet the Court’s deadline if it focuses its energies on compliance, and not on the endless re-litigation of meritless motions to compel.

We appreciate Your Honor’s attention to this matter, and we are available to answer any questions.

Respectfully submitted,

/s/ Harry Sandick

Harry Sandick

cc: Counsel for SaveOnSP

EXHIBIT 13



E. EVANS WOHLFORTH, JR.

666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com
Direct (212) 451-2954

Admitted in New York
and New Jersey

February 7, 2024

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (JKS) (CLW)

Dear Judge Wolfson:

On behalf of Defendant Save On SP LLC (“**SaveOn**”), we ask you to resolve a potential ambiguity in the Court’s November 7, 2023 Order, Dkt. 173 (“the Order”), issued after the October 30, 2023 discovery conference, and compel Johnson & Johnson Health Care Systems, Inc. (with its affiliates, “**J&J**”) to refresh its document production from July 1, 2022 through November 7, 2023 using all search terms to which it previously agreed.

The potential ambiguity is this: In the second paragraph of the portion of the Order ruling on the issues raised in Docket Entry No. 166 (“**Paragraph 2**”), the Court compelled J&J to run three search terms—“CAPa” OR “CAPm” OR “adjustment program” (the “**CAP Terms**”)—to

the extent that they “are found in documents as the term ‘SaveOn’ (or reasonable variations / abbreviations),” through November 7, 2023. Dkt. 173 at 2-3. In the next paragraph (“Paragraph 3”), the Court ordered both parties, including J&J, to “update their discovery responses (including productions)” “*without limitation*,” also through November 7, 2023. *Id.* at 3 (original emphasis). Because J&J had already agreed to run the CAP Terms without a “SaveOn limiter” through July 1, 2022, Paragraph 3 compels it to run those same terms over its updated production without a limiter. J&J argues, however, that Paragraph 2 allows it to run the CAP terms *with* a “SaveOn limiter” for its updated production.

Documents concerning the CAP program are key to SaveOn’s defenses. [REDACTED]

[REDACTED], Dkt. 166 at 2, [REDACTED]
[REDACTED] Dkt. 166 at 2. The CAP program is highly relevant: If J&J identified patients on SaveOn-advised plans and paid them anyway, then J&J failed to mitigate its purported damages. J&J did not disclose the existence of the CAP program during the initial stages of discovery and did not propose any search terms to capture documents related to it. On September 29, 2023, after extensive meeting and conferring, J&J agreed to run three search terms—“CAPa” OR “CAPm” OR “adjustment program”—for its custodians over the originally agreed-upon discovery period of April 1, 2016 through July 1, 2022. Ex. 1 (Sept. 29, 2023 Email from J. Long to E. Snow), notably, without the SaveOn limiter.

Because J&J did not implement the CAP program until late 2021, SaveOn asked J&J to run the CAP search terms from July 1, 2022 to the present. Sept. 27, 2023 Email from E. Snow to J. Long. J&J refused and SaveOn moved to compel in the joint letter filed as Docket Entry No. 166. At the October 30, 2023 discovery conference, Judge Waldor granted SaveOn’s motion in part and ordered J&J to run the CAP terms through the present, but only for documents in which

the term “SaveOn,” or some variation, appeared. Dkt. 171 at 108. This ruling was memorialized in Paragraph 2 of the Court’s November 7 Order.

But that was not the end of Judge Waldor’s rulings during the October 30 conference. After Judge Waldor ruled on SaveOn’s motion, J&J orally moved the Court to compel SaveOn to “update their searching through to the present.” Dkt. 171 at 109. J&J made this oral motion without prior notice to SaveOn, without meeting and conferring, and without filing a joint letter seeking that relief. After discussion, Judge Waldor stated that both parties should update their productions through the present “*without limitation*.” Dkt. 171 at 114. That ruling was memorialized in Paragraph 3 of the Court’s November 7 order. Dkt. 173 at 3.

Because J&J raised the issue of a full refresh at the conference without notice to SaveOn or written submission to the Court, Judge Waldor was not made aware that the existing search terms that J&J had already agreed to run (and which it is obligated to run under Paragraph 3 of the Order) included both (1) variations on “SaveOn” and (2) the CAP Terms as independent terms. These terms make sense: Documents that explicitly mention SaveOn are likely to be relevant. Documents that mention the CAP program are also likely to be relevant (even if they do not explicitly mention SaveOn), because the entire purpose of the CAP program is to respond to SaveOn and other similar businesses. Further, by refusing to run the CAP Terms over documents that do not explicitly mention SaveOn, J&J has rendered Paragraph 2 of Judge Waldor’s Order meaningless, because every single document covered by that Paragraph 2 of that Order would have already been captured by the standalone “SaveOn” search term, which J&J acknowledges it is obligated to run per Paragraph 3 of the Order.

Even if J&J's reading of the Order were correct, documents produced since the October 30 conference would provide ample grounds to reconsider that decision, as they show that applying the "SaveOn" limiter to the CAP Term would exclude from discovery highly relevant documents. Take, for example, Exhibit 2 (JJHCS_00146512). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As another example, consider Exhibit 3 (JJHCS_00145741). [REDACTED]

[REDACTED]

[REDACTED] Whether J&J has made such identifications since July 1, 2022 is also relevant to mitigation and acquiescence. Both documents use one or more individual term of the CAP Term, but not a variation of the term "SaveOn," so running the CAP Terms with a "SaveOn" limiter would exclude such documents.¹ To ensure that such documents are captured in J&J's refreshed production, the Court should compel it to run the CAP Terms without any limitation.

¹ There are numerous other examples of such documents in J&J's productions since the October 30, 2023 conference. *See, e.g.*, Ex. 4 (JJHCS_00142279) ([REDACTED])

[REDACTED]; Ex. 5 (JJHCS_00156936) ([REDACTED])
[REDACTED]; Ex. 6 (JJHCS_00146145) ([REDACTED])
[REDACTED]; Ex. 7 (JJHCS_00150735) ([REDACTED])
[REDACTED]; Ex. 8 (JJHCS_00140763) ([REDACTED])
[REDACTED]; Ex. 9 (JJHCS_00141346) ([REDACTED])
[REDACTED]; Ex. 10 (JJHCS_00145571) ([REDACTED])
[REDACTED]; Ex. 11 (JJHCS_00139311) ([REDACTED])

SaveOn appreciates the Court's attention to this matter.

Respectfully submitted,

/s/ E. Evans Wohlforth, Jr.
E. Evans Wohlforth, Jr.
Robinson & Cole LLP
666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com

Andrew R. Dunlap (admitted *pro hac vice*)
Meredith Nelson (admitted *pro hac vice*)
Elizabeth H. Snow (admitted *pro hac vice*)
SELENDY GAY PLLC
1290 Avenue of the Americas
New York, NY 10104
(212) 390-9000

adunlap@selendygay.com
mnelson@selendygay.com
esnow@selendygay.com

Attorneys for Defendant Save On SP, LLC

[REDACTED].

EXHIBIT 14

From: Long, Julia (x2878) <jlong@pbwt.com>

Sent: Friday, September 29, 2023 6:23:35 PM

To: Elizabeth Snow <esnow@selendygay.com>; Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>

Cc: Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; David Elsberg <delsberg@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>

Subject: RE: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Counsel:

In an effort to reach compromise and reduce the number of disputes before Judge Waldor at our October 30 conference, JJHCS agrees to run the terms “CAPa,” “CAPm” and “adjustment program” for the agreed-upon relevant time period, April 1, 2016 to July 1, 2022.

We hope that this will resolve the dispute. We do not think a demand through to the present by SaveOnSP is appropriate or feasible. As JJHCS has no direct knowledge of SaveOnSP’s conduct at issue, JJHCS’s documents primarily relate to its awareness and response to SaveOnSP, and this demand amounts to a wholesale update of the production. We note SaveOnSP has rejected even several discrete updates, let alone a wholesale update, of its own production.

Please let us know if our proposed production resolves this dispute.

JJHCS will respond separately to your joint letter on SaveOnSP’s interrogatories next week.

Best,
Julia

Julia Long
She | Her | Hers
Associate

Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036

T 212.336.2878

jlong@pbwt.com

From: Elizabeth Snow <esnow@selendygay.com>

Sent: Wednesday, September 27, 2023 12:12 PM

To: Long, Julia (x2878) <jlong@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>

Cc: Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; ~delsberg@selendygay.com <delsberg@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>

Subject: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Caution: External Email!

Counsel,

Please find attached a joint letter that SaveOnSP intends to file with the Court. We ask that you please provide JJHCS's portion by end of day Monday, October 2. We reserve the right to revise in response to any revisions.

Thanks,

Elizabeth

Elizabeth Snow

Associate [\[Email\]](#)

Selendy Gay Elsberg PLLC [\[Web\]](#)

Pronouns: she, her, hers

+1 212.390.9330 [O]

+1 540.409.7257 [M]

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February 28, 2024

Harry Sandick
Partner
(212) 336-2723
hsandick@pbwt.com

By Email

Hon. Freda L. Wolfson
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, NJ 07068

**Re: JJHCS's Opposition to SaveOnSP's February 16 Motion to Compel
Johnson and Johnson Health Care Systems, Inc. v. Save On SP, LLC
No. 2:22-cv-02632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of Johnson & Johnson Health Care Systems, Inc. ("JJHCS"), we write in opposition to the February 16, 2024 letter motion by Defendant Save On SP, LLC ("SaveOnSP") seeking to compel the addition of a search string—"CAPa" OR "CAPm" OR "adjustment program"—over the files of newly ordered custodians Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, L.D. Platt, Alison Barklage, Scott White, Blasine Penkowski, and Karen Lade.

SaveOnSP's litigation strategy is now clear. It has taken the appointment of a Special Discovery Master as liberty to relitigate issues that it lost before the Magistrate Judge, and to seek reconsideration on issues it loses going forward before the Discovery Master. SaveOnSP thereby seeks to tie this case up in discovery, which is to its advantage because the amount it misappropriates from manufacturer patient assistance funds every day far exceeds what it spends on litigation. This motion specifically is the latest attempt by SaveOnSP to relitigate yet another issue squarely resolved by the November 7, 2023 Order, which made clear that CAP-related search

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terms would only be used where they appeared in addition to SaveOnSP-related terms, to ensure that discovery was limited to matters relevant to this case rather than encompassing matters relevant to other maximizer programs from other companies. *See* Dkt. No. 173 at 2–3. SaveOnSP brought this motion after it filed a nearly identical motion on February 7, 2024, requesting the same relief with respect to a different set of custodians, even after JJHCS stated that if the Court granted the February 7 motion, JJHCS would voluntarily apply the Court’s ruling to the new custodians. *See* Ex. 1 (Feb. 15, 2024 Ltr. from J. Greenbaum to Hon. Wolfson at 8–9). In other words, this is the third time SaveOnSP has sought to force JJHCS to run this search term—twice after Judge Waldor denied SaveOnSP’s initial motion.

I. Judge Waldor Directed JJHCS to Review Documents Wherein the Terms “CAP A,” “CAP M,” or “Adjustment Program” Appear in the Same Document as SaveOnSP

JJHCS already has briefed Your Honor on the Court’s November 7 Order (Dkt. No. 173). As addressed at length in our prior submission, that Order directed JJHCS to fashion a search designed to capture documents wherein the terms ‘CAP A,’ ‘CAP M,’ or ‘adjustment program’ (or reasonable variations of those terms) are found in the same documents as the term ‘SaveOn’ (or reasonable variations / abbreviations).

Dkt. No. 173 at 2–3.

Despite SaveOnSP’s continued insistence that “clarification” is required, there is nothing unclear about this instruction. Judge Waldor considered the same arguments SaveOnSP now repackages for a third time, and repeatedly refused to order JJHCS to review documents that did not mention SaveOnSP. *See* Oct. 20, 2023 Tr. at 101:10 (“THE COURT: *I’m going to order that they search CAP A and CAP M and adjustment programs but related to SaveOn.*” (emphasis added)); *id.* at 102:11–15 (rejecting SaveOnSP’s request for “*or*” SaveOn (emphasis

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added)); *id.* at 102:24–103:4 (ruling that the documents must be “[r]elated to *SaveOn*. *Qualified by SaveOn*.” (emphasis added)). Judge Waldor similarly considered and ultimately rejected SaveOnSP’s argument that, because JJHCS employees “don’t always use the word ‘SaveOn’ or ‘SOSP’” and instead use the phrases “ESI’s maximizer” or “maximizer program[,]” those terms should be added to the “CAP” search string. *Id.* at 105:16–106:6.

This clear ruling defeats SaveOnSP’s resurrection of the argument that using a “SaveOn” limiter would “let J&J withhold [] documents” that do not reference SaveOnSP. Judge Waldor heard the same argument and was unpersuaded, concluding that the “SaveOn” limiter was needed to tie SaveOnSP’s requested discovery to this case rather than matters relevant to other maximizer programs from other companies. *See id.* at 83:10–84:21, 101:10–108:23. As JJHCS argued in October:

[T]here [are] a . . . [l]ist of companies out there in the market that are in this category of maximizers or accumulators. . . . Some of them have been involved in other litigation with other pharmaceutical companies, but there’s a long list of them, maximizers, accumulators, they are the subject of movements in various states to outlaw them as a matter of state law. . . . And while we’re very focused on SaveOn and we’ve sued them because they think they’re one of the most egregious actors in the industry, that doesn’t change the fact that there are lots of other entities that are out there.

Now, when you go looking for anything to do with CAP A or CAP M or adjustment program, none of [that] is limited to SaveOn. And that is part of why it would pull in reams and reams of material and hits here. They haven’t chosen to limit their search terms any way.

Id. at 83:10–84:10. It was in this context that Judge Waldor first raised the suggestion of a SaveOn “qualifier.” *Id.* at 84:20–21. SaveOnSP repeatedly sought to revisit Judge Waldor’s qualifier, but she rejected that attempt every time, as quoted above. She also made her purpose clear: “THE COURT: I’m trying to get where we bring in that which is . . . identifiable with SaveOn.” *Id.* at

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103:15–18. Judge Waldor ultimately memorialized this limitation in the November 7 Order, and there is no reasoned basis to depart from that ruling. Indeed, even SaveOnSP’s own counsel eventually acknowledged at the October 30 conference that documents “talking about SaveOn” would be “sufficient” to capture relevant documents concerning the CAP Program. *Id.* at 107:21–108:23. The same is true for the new custodians at issue here.

SaveOnSP also recycles its argument that there is some internal inconsistency in Judge Waldor’s Order, in light of her ruling that the parties needed to update their discovery responses through November 7. There is no inconsistency. First, the November 7 Order (issued after the October 30 colloquy above) maintained the SaveOnSP limiter with respect to CAP, even as Judge Waldor ordered a full update of discovery. Second, even if there was a conflict between the general “refresh” ruling and the specific ruling with respect to the “CAP” search string, the specific ruling as to the CAP program would govern due to the canon of construction that the “specific trumps the general.” *E.g., Kotchetkova v. Garnet Health Med. Ctr.*, --- F. Supp. 3d ----, 2023 WL 6474630, at *4–5 (D.N.J. Oct. 5, 2023). It is illogical to suggest that when Judge Waldor issued a general ruling asking the parties to update their productions, she was somehow making an implicit determination about the appropriate scope of CAP-related discovery, especially when she considered that specific issue the prior week and expressly ruled in the same order that CAP-related discovery must be limited to that also involving SaveOnSP. Your Honor should reject SaveOnSP’s endless attempts to reopen this issue and deny SaveOnSP’s motion.

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II. SaveOnSP's Claim that JJHCS "Would Effectively Run No New Search Terms Related to the CAP Program" Is Baseless

Your Honor's analysis can end here at point I. But if Your Honor wishes to consider SaveOnSP's repetition of arguments that it previously lost, we also repeat our arguments in opposition here. First, as in its February 7 Motion, SaveOnSP contends that JJHCS's position "render[s] the CAP Terms meaningless." Feb. 16, 2024 Ltr. from E. Wohlforth to Hon. Wolfson at 3. That is incorrect. Relying on the November 7 Order, JJHCS already has reviewed and produced scores of documents hitting on the CAP search term *with* the SaveOnSP modifier. JJHCS will make an additional production of documents hitting on these search terms, and others, by the end of next week. It is disingenuous of SaveOnSP to ignore these productions.

Second, SaveOnSP appears to take issue with the fact that JJHCS has since agreed to use other, broader search terms over the same custodial records, which effectively subsume the narrower CAP term. This is an odd argument for SaveOnSP to advance. The net result of the parties' negotiations *benefits* SaveOnSP: JJHCS has agreed to review every document mentioning SaveOnSP (and reasonable variations thereof) and SaveOnSP's founders, as well as every document referring to SaveOnSP as "ESI's accumulator program or ESI's maximizer program," as SaveOnSP raised at the January 24, 2024 conference,¹ across not only the new custodians but all 26 custodians for the entire April 1, 2016 to November 7, 2023 time period. That these broader search terms necessarily capture every instance in which the "CAP" program "[r]elate[s] to SaveOn," as Judge Waldor directed, does not prejudice SaveOnSP.

¹ See Jan. 24, 2024 Tr. at 108:4–6.

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Indeed, what JJHCS has now agreed to do is a broader undertaking than even what Your Honor directed earlier this month. For example, as to the CAP custodians, JJHCS only was required to “use CAP-related search terms, including terms that capture discussions by the custodians prior to the creation of the CAP program.” Dkt. No. 192 at 26. In the interest of compromise, JJHCS agreed to use a broader set of search terms to fulfill this obligation, including SaveOnSP (and variations thereof) and variations of ESI (and Accredo) in proximity to maximizer and accumulator—at SaveOnSP’s suggestion. *See* Ex. 2 (listing agreed-upon search terms); Ex. 3 (Feb. 15, 2024 Ltr. from J. Long to E. Snow at 1–2). JJHCS agreed to run eight of the eleven search terms that SaveOnSP requested to fulfill this obligation. The only proposed search terms JJHCS declined to add were the “CAP” terms without a SaveOnSP modifier, based on Judge Waldor’s November 7 Order, and two terms that SaveOnSP itself acknowledged had no connection to the JJHCS’s CAP-related efforts. *See* Ex. 2.

The same is true for Scott White, Blasine Penkowski, and Karen Lade.² Here, too, JJHCS has agreed to run the vast majority of terms that SaveOnSP requested, which it ostensibly designed to capture relevant documents. For Mr. White, JJHCS agreed to six of SaveOnSP’s proposed terms, only declining to add the “CAP” terms without a SaveOnSP modifier (citing Judge Waldor’s November 7 Order) and, as to the eighth term, suggesting instead that JJHCS search for and produce final contracts and statements of work with Trial Card from non-custodial sources. As to Ms. Penkowski and Ms. Lade, JJHCS took the same approach, rejecting only search terms

² As Your Honor recognized, Mr. White and Ms. Penkowski are senior executives and thus directed only “[v]ery limited” search terms be used over their custodial documents. Jan. 24, 2024 Tr. at 128:14–17.

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designed to capture “return on investment” and “budget” documents that Your Honor specifically rejected and proposing modest revisions to other terms unrelated to the CAP program. *See* Ex. 2.

JJHCS’s willingness to compromise should not be held out as a reason to depart from Judge Waldor’s November Order. Otherwise, parties will be incentivized to dig in and never to compromise, lest their efforts be weaponized against them in the future. For a productive discovery process, the parties must embrace their wins and their losses—not endlessly relitigate the same issues in the hope that one judge will reverse another.

* * *

JJHCS has made every effort to comply with Judge Waldor’s orders and the February 6 Order. SaveOnSP has taken a very different approach, forcing JJHCS to litigate the same issues over and over again.³ For discovery to proceed in an expeditious and fair fashion, the Court’s orders must be respected. SaveOnSP’s latest motion should be denied.

We appreciate Your Honor’s attention to this matter, and we are available to answer any questions.

Respectfully submitted,

/s/ Harry Sandick
Harry Sandick

cc: Counsel for SaveOnSP

³ *See also* SaveOnSP’s Feb. 20, 2024 Motion for Clarification and Reconsideration.

Exhibit 1

Sills Cummis & Gross
A Professional Corporation

The Legal Center
One Riverfront Plaza
Newark, New Jersey 07102
Tel: (973) 643-7000
Fax (973) 643-6500

Jeffrey J. Greenbaum
Member
Admitted In NJ, NY
Direct Dial: 973-643-5430
Email:
jgreenbaum@sillscummis.com

101 Park Avenue
28th Floor
New York, NY 10178
Tel: (212) 643-7000
Fax: (212) 643-6500

February 15, 2024

The Honorable Freda L. Wolfson
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Healthcare Systems Inc. v. Save On SP, LLC*
Case No. 2:22-cv-02632 (JKS) (CLW)

Dear Judge Wolfson:

On behalf of Plaintiff Johnson & Johnson Health Care Systems Inc. (“JJHCS”), we write pursuant to Your Honor’s February 6, 2024 Order (the “Order”) to provide an update on the discovery issues addressed at the January 24, 2024 conference, including agreements reached between the parties and the status of document productions.

Immediately following the Court’s January 24 conference, JJHCS began to diligently collect documents—including from the five new custodians specifically addressed in the Order and other former JJHCS employees—to comply with Your Honor’s directives. We also exchanged letters and conferred with counsel for SaveOnSP seeking to resolve any outstanding issues. In these discussions, however, a pattern emerged that has significantly inhibited the parties from making progress. Rather than accept and abide by the Court’s rulings, SaveOnSP insists on disregarding any Orders that went against it. For example, SaveOnSP continues to insist that JJHCS collect and produce documents on subjects where the Order or prior rulings from Judge

Waldor *sustained* JJHCS’s objections. For example, SaveOnSP has demanded that JJHCS collect and produce documents related to terms and conditions and ancillary financial documents on issues squarely foreclosed by Your Honor’s Order, including *inter alia*, documents and communications related to CarePath’s budget and return on investment (or “ROI”). SaveOnSP similarly demands that JJHCS run a search for documents referencing “CAPa,” “CAPm,” or “adjustment program,” without a SaveOnSP modifier, despite the November 7 Order squarely resolving the issue. *See* Dkt. No. 173 at 2–3.

JJHCS has clearly communicated its position to SaveOnSP: the Order outlines with specificity the categories of documents that JJHCS must produce. Where the Court overruled our objections, we will comply with the Order. But SaveOnSP too must accept both its victories and its losses. Instead, SaveOnSP continues to insist on search terms that seeks documents concerning the very issues it lost, pressing JJHCS to add new custodians on those issues, and even demanding the parties re-open issues long decided by Judge Waldor.¹ This approach forces JJHCS to litigate the same issues over and over again. For discovery to proceed in an orderly fashion, the Court’s orders must be respected.

I. Financial Documents

SaveOnSP continues to demand JJHCS produce (1) “documents showing how J&J sets the level of CarePath copay assistance funds that it offers patients, how it decides on the CarePath budget including the factors that go into this decision, where that decision is made, and the relevant communications about the budget” and (2) “documents and communications regarding

¹ For example, SaveOnSP recently renewed its request that JJHCS identify custodians, search for and produce responsive documents, and provide interrogatory responses based on information outside of JJHCS, including within Janssen. SaveOnSP has repeatedly litigated this issue, and Judge Waldor twice denied the broad relief SaveOnSP sought. *See* Dkt. No. 127; Oct. 30, 2023 Tr. at 36:9–41:7; Dkt. No. 173 at 2.

[JJHCS's] actual and projected return on investment," including "documents and communications regarding accumulators' and maximizers' effect on [JJHCS's] ROI." Jan. 29, 2024 Ltr. from E. Snow to J. Long at 1, 3. SaveOnSP's demands ignore Your Honor's Order.

As to issues concerning CarePath's budget, Your Honor concluded that "[JJHCS] has the better argument" and "communications of budgetary decisions are not relevant to Defendant's defenses or Plaintiff's claims." Dkt. No. 192 at 19. Accordingly, JJHCS has refused to run SaveOnSP's requested search terms related to this issue. The same is true for SaveOnSP's demands that JJHCS run search terms related to ROI, which Your Honor squarely rejected. *Id.* at 21 ("[W]hether Plaintiff's operation is ultimately profitable is not the relevant inquiry."). SaveOnSP has not explained any coherent basis for its refusal to recognize the limitations imposed by the Court.

At the February 12 meet and confer, SaveOnSP also raised for the first time that JJHCS should search for and produce documents that reflect whether more patients are taking Janssen drugs as a result of being on health plans advised by SaveOnSP—including "documents showing how all accumulators or maximizers affect J&J." *See* Feb. 14, 2024 Ltr. from E. Snow to J. Long at 2. Here, too, SaveOnSP's demands bear no rational relationship to the Court's "small window" of discovery on "documents that may reflect whether more patients are taking Janssen drugs as a result of being on the SaveOnSp Program." Dkt. No. 192 at 22. JJHCS remains available to meet and confer should SaveOnSP choose to follow Your Honor's directives and propose terms that are meant to comply with them.

II. Terms and Conditions

The parties continue to meet and confer on issues related to the drafting and enforcement of the CarePath terms and conditions ("T&Cs"), but the same problems have bogged

down discussions. SaveOnSP's insistence on relitigating issues resolved by the Order is rendering resolution of these issues challenging.

At the January 24 conference, Your Honor directed JJHCS to "first search and determine whether any relevant documents can be found" concerning the drafting of the CarePath T&Cs from as early as 2009. Dkt. No. 192 at 10. JJHCS provided an initial update to Your Honor on February 2. As detailed in that letter, JJHCS has identified "two non-attorney employees involved in CarePath's predecessor programs may have available email data from as early as 2010, based on document collection in unrelated proceedings that appear to have been retained." Feb. 2, 2024 Ltr. from H. Sandick to Hon. Wolfson at 1. Using search terms, JJHCS has identified a subset of those documents that may relate to the T&Cs of CarePath's predecessor programs. At the parties' February 12 meet and confer, JJHCS agreed to consider SaveOnSP's proposed search terms to be run over these files. JJHCS is moving as quickly as possible to search these documents and to make productions of responsive, non-privileged documents in compliance with the Court's order. There is no present dispute on this issue.

As to enforcement of the T&Cs, however, SaveOnSP continues to demand documents concerning every instance in which JJHCS "investigated, enforced, or contemplated enforcing" its T&Cs. Feb. 5, 2024 Ltr. from E. Snow to J. Long at 2. This disregards Your Honor's Order. At the January 24 conference, Your Honor made clear that SaveOnSP "[doesn't] need the underlying investigations" and instead should focus on producing "documents that reflect [whether JJHCS was] going to aggressively pursue these terms." Jan. 24, 2024 Tr. at 39:12–24 (describing enforcement documents as being "of a more general nature than every individual one that they do"). Your Honor memorialized this ruling in the February 6 Order, "agree[ing] with Plaintiff's argument that it would be burdensome to search and produce records of each individual patient's call history," Dkt. No. 192 at 12–13, and limiting the scope of production to "documents reflecting

the company's enforcement instructions and policy, during the entirety of the agreed upon discovery time frame (April 2016-November 2023), concerning eligibility criteria set forth in the provision: 'may not be used with any other coupon, discount, prescription savings card, free trial, or other offer.'" *Id.* at 13. But despite this very specific guidance, SaveOnSP still asserts that it is entitled to production of documents reflecting "documents sufficient to show *the instances*" in which JJHCS:

- "investigated, enforced, or contemplated enforcing CarePath eligibility standards, including without limitation for patients on Medicare, Medicaid or other government-provided insurance, or patients ineligible due to their age";
- "investigated, enforced, or contemplated enforcing the General T&Cs for purported violations of (1) the 'other offer' provision on any basis; (2) the 'other offer' provision as to entities J&J considered 'maximizers' or 'accumulators' (including without limitation OptumRx and PrudentRx); and (3) the 'other offer' provision as to SaveOn"; and
- "investigated, enforced or contemplated enforcing the General T&Cs for violation of any of the 'other offer,' 'coupon,' 'discount,' 'prescription savings card' and 'free trial' provisions."

SaveOnSP's new formulation of these requests, using the words "documents sufficient to show the instances" provides no meaningful limitation here. SaveOnSP is again ignoring both what Your Honor rejected (i.e., documents relating every single instance in which a decision was made about whether to provide or terminate copay support to specific patients, which is what SaveOnSP continues to seek) and the limited scope of discovery that Your Honor permitted (production of instructions and policies on a defined issue).

Indeed, SaveOnSP has been unwilling to negotiate search terms specific to the discovery that Your Honor ordered, i.e., "documents reflecting the company's enforcement instructions and policy." Instead, it continues to demand search terms that bear no connection to the permitted scope of discovery. For example, one of SaveOnSP's proposed terms would even require JJHCS to review all documents in which the term "other offer" appeared in the same document as "PrudentRx" or "OptumRx" (including variations thereof). Far from seeking

documents limited to JJHCS enforcement policies, this search seeks documents about separate companies unrelated to SaveOnSP that are not even part of this lawsuit and which SaveOnSP never requested at any point in the eleven months the parties litigated this issue. Again, SaveOnSP should not be permitted to disregard the Court's orders.

III. Discovery From New Custodians

JJHCS is diligently working to comply with Your Honor's Order and continues to collect and process custodial data from the five new JJHCS custodians (Scott White, Blasine Penkowski, Karen Lade, Savaria Harris, and Jennifer De Camara) added at the January 24 conference. To help resolve disputes, JJHCS also has voluntarily added a sixth custodian, Debbie Kenworthy, for the period June 1, 2023 to November 7, 2023.

Following SaveOnSP's proposal of search terms, the parties met and conferred for more than two hours on February 12 to negotiate search terms for each of these custodians. During the meet and confer, JJHCS agreed to run the vast majority of SaveOnSP's proposed search terms. JJHCS memorializes the status of the parties' agreement on various search terms in Exhibit 1 of the attached. But three sets of disputes have crystallized with respect to these new custodians.

a. SaveOnSP's Insistence on Broad Searches That Your Honor Has Rejected

JJHCS declined to run several terms that conflict with Your Honor's directive. These include: (i) search terms unrelated to CAP or mitigation issues for the CAP custodians; (ii) search terms designed to capture every instance of "coupon" or "discount" within the same document as the term "Janssen"; (iii) search terms designed to capture ROI and budget information generally. Your Honor squarely rejected discovery on these issues.

On the first issue, for the CAP custodians, Your Honor only ordered the production of documents relating to CAP issues for the time period April 2016 to November 2023. Dkt. No. 192 at 26. In so ruling, Your Honor rejected SaveOnSP's argument that the November 7 Order

was meant to add the “CAP” custodians for all purposes and instead directed the use of “CAP-related search terms, including terms that capture discussions by the custodians prior to the creation of the CAP program.” *Id.* SaveOnSP disregards that limitation.

On the second issue, when JJHCS counsel raised the concern that JJHCS would be forced to look for “every time that someone mentioned discount or coupon,” the Court stated that “[i]t’s not going to happen.” Jan. 24, 2024 Tr. at 37:4–37:12 (“MR. SANDICK: Your Honor, Mr. Dunlap said a moment ago words to the effect of, we’re not looking for every time that somebody mentioned discount or coupon, but the search terms that they proposed even after Judge Waldor ordered them to narrow their request are exactly what Mr. Dunlap just said – JUDGE WOLFSON: It’s not going to happen.”). SaveOnSP disregards that limitation too.

As to the third issue, search terms aimed at investment and budget issues, SaveOnSP continues to demand that JJHCS run several financial-related search terms over Ms. Penkowski’s and Ms. Lade’s documents notwithstanding the Court’s Order. For example, as to issues concerning CarePath’s budget, Your Honor concluded that “[JJHCS] has the better argument” and “communications of budgetary decisions are not relevant to Defendant’s defenses or Plaintiff’s claims.” Dkt. No. 192 at 19. But SaveOnSP continues to insist on those documents from new custodians. Similarly, as to issues related to ROI, Your Honor unambiguously rejected SaveOnSP’s arguments, finding that JJHCS’s “alleged harm is not related to the profitability of any Janssen drugs. Put differently, even if J&J and its [affiliates] ultimately derive profits . . . from selling the drugs at issue, that fact does not disprove Plaintiff’s alleged harm in this case, either to itself or to the public.” *Id.* at 22. Again, SaveOnSP is unmoved by Your Honor’s guidance. For these reasons, as detailed in Exhibit 1, JJHCS will not run search terms that apply only to matters Your Honor has already rejected as an appropriate scope for discovery.

b. SaveOnSP's Insistence on Discovery From Attorney Custodians That Disregards Limitations Imposed by Your Honor

The parties also have additional disputes that are specific to the J&J in-house counsel that Your Honor ordered to be added as custodians: Savaria Harris and Jennifer De Camara. Your Honor was very clear that discovery from these attorneys would be carefully circumscribed and limited to documents and communications (1) between the attorneys and any third-party entities (2) that concern the “new terms and conditions for both its Stelara and Tremfya medications” implemented in January 2022. *Id.* at 13–14. SaveOnSP appears willing to accept the first limitation, but insists on disregarding the second. Specifically, SaveOnSP continues to insist on documents with any reference to coupon or discount, and without any connection to Stelara and Tremfya. JJHCS has refused to run such searches and will abide by the scope of discovery that Your Honor ordered.

c. SaveOnSP's Insistence on CAP Searches That Disregard Limitations Imposed by Judge Waldor

The parties also are at impasse on the addition of search string “CAPa” OR “CAPm” OR “adjustment program” without a “SaveOn” limiter for the new custodians. This is another example of SaveOnSP refusing to abide by prior orders, in this case one issued by Judge Waldor. This issue raised by SaveOnSP is squarely resolved by the Court’s November 7, 2023 Order, which made clear that CAP-related terms would only be searched where they appeared in addition to SaveOnSP-related terms, to ensure that discovery was limited to matters relevant to this case rather than encompassing matters relevant to other maximizer programs from other companies. *See* Dkt. No. 173 at 2–3. At any rate, whether to run this string will soon be *sub judice*, as it is at issue in SaveOnSP’s recent motion for “clarification” of the Court’s November 7 Order. *See* Feb. 7, 2024 Mot. from E. Wohlforth to Hon. Wolfson. JJHCS opposes reopening this long-decided issue. Indeed, as set forth in JJHCS’s recent submission, SaveOnSP counsel

previously expressly accepted the resolution set forth in Judge Waldor's order, which SaveOnSP now apparently seeks to overturn. *See* Feb. 14, 2024 Opp. from H. Sandick to Hon. Wolfson. Should Your Honor overrule our objection, reverse Judge Waldor's determination, and expand the scope of the Court's November 7 Order with respect to the CAP search terms, JJHCS will adopt that application to the new custodians at issue.

JJHCS will continue to meet and confer in good faith with SaveOnSP on these issues. Following the parties' February 12 meet and confer, SaveOnSP agreed to consider narrowing several of the remaining terms at issue. JJHCS also provided SaveOnSP with a counterproposal as to several outstanding terms. JJHCS will respond to SaveOnSP's counterproposal, once received, on any remaining terms.

* * *

We are reporting these issues in light of Your Honor's request for an update, but we are not asking for any rulings at this time. In our view, the parties should continue to meet and confer on appropriate search terms for the topics on which Your Honor permitted discovery. If the parties cannot reach compromise, we will present any remaining issues to Your Honor for resolution.

IV. Upcoming Issues

JJHCS continues to meet and confer in good faith with SaveOnSP in connection with several other ongoing discovery issues. Since the January 24 conference, JJHCS has identified several deficiencies with SaveOnSP's Supplemental Responses and Objections to JJHCS's Interrogatories. This is a significant issue, which relates to SaveOnSP's repeated failure to provide a clear and comprehensive accounting of all instances in which its employees lied to drug manufacturers in furtherance of their scheme. Most pressing is SaveOnSP's failure to comply with Your Honor's January 31 deadline to update and verify its supplemental interrogatory

The Honorable Freda L. Wolfson

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responses in violation of Federal Rule of Civil Procedure 33(b)(5). JJHCS has raised other several concerns with SaveOnSP concerning the substance of SaveOnSP's supplemental responses. JJHCS will promptly raise these issues before Your Honor in the near future.

Respectfully submitted,

/s/ Jeffrey J. Greenbaum

JEFFREY J. GREENBAUM

cc: All Counsel
(by email)

Exhibit 2

<p align="center"><u>“CAP” Custodian Search Terms</u></p> <p><u>Custodians:</u> Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt</p> <p><u>Date Range:</u> April 1, 2016 to November 7, 2023</p>	
SaveOnSP’s Proposed Terms	JJHCS’s Position
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”	Accepted
“Save On” (<i>case sensitive</i>)	Accepted
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)	Accepted
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)	Accepted
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)	Accepted
“other offer” w/5 (accumulat* OR maximiz*)	Accepted
(CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP)	Accepted
(“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (<i>case sensitive</i>)	Accepted
“CAPa” OR “CAPm” OR “adjustment program”	Consistent with the Court’s November 7 Order, JJHCS will run this term with a SaveOnSP limiter. <i>See</i> Dkt. No. 173 at 2–3.
“essential health benefit*” OR EHB* OR “non-essential health benefit” OR “nonessential health benefit*” OR NEHB*	JJHCS declines to run this term, which SaveOnSP acknowledged as no connection to JJHCS’s CAP-related efforts.
(essential OR nonessential OR non-essential OR “non essential”) w/50 (“Affordable Care Act” OR ACA OR Obamacare)	JJHCS declines to run this term, which SaveOnSP acknowledged as no connection to JJHCS’s CAP-related efforts.

<p align="center"><u>Scott White Search Terms</u></p> <p align="center"><u>Date Range:</u> April 1, 2016 to November 7, 2023</p>	
SaveOnSP's Proposed Terms	JJHCS's Position
"Save On" (<i>case sensitive</i>)	Accepted
"save on" w/50 (accumulat* OR maximiz* OR "essential health benefit*" OR EHB* OR "non-essential health benefit*" OR "nonessential health benefit*" OR NEHB* OR accredo OR ESI OR "express scripts")	Accepted
SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSp OR "Jody Miller" OR "Ron Krawczyk"	Accepted
("Express Scripts" OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)	Accepted
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)	Accepted
(STELARA* OR TREMFYA* OR CarePath OR JCP OR "Savings Program") w/25 (6000 OR 6,000 OR limit OR eliminate)	Accepted
"CAPa" OR "CAPm" OR "adjustment program"	Consistent with the Court's November 7 Order, JJHCS will run this term with a SaveOnSP limiter. <i>See</i> Dkt. No. 173 at 2–3.
("TrialCard" OR "Trial Card" OR TC) AND ((statement* /5 work) OR "SOW*" OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR "Savings Program" OR "WithMe" OR (with w/2 me)) ¹	JJHCS declines to run this term, but has agreed to search for and produce final contracts and statements of work with Trial Card from non-custodial sources.

¹ SaveOnSP recently proposed a variation of this term. JJHCS will respond to that proposal this week.

<p align="center"><u>Blasine Penkowski Search Terms</u></p> <p align="center"><u>Date Range:</u> April 1, 2016 to November 7, 2023</p>	
SaveOnSP's Proposed Terms	JJHCS's Position
“Save On” (<i>case sensitive</i>)	Accepted
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)	Accepted
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”	Accepted
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)	Accepted
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)	Accepted
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)	Accepted
“CAPa” OR “CAPm” OR “adjustment program”	Consistent with the Court’s November 7 Order, JJHCS will run this term with a SaveOnSP limiter. <i>See</i> Dkt. No. 173 at 2–3.
(“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me)) ²	JJHCS declines to run this term, but has agreed to search for and produce final contracts and statements of work with Trial Card from non-custodial sources.

² SaveOnSP recently proposed a variation of this term. JJHCS will respond to that proposal this week.

<p align="center"><u>Blasine Penkowski Search Terms</u></p> <p align="center"><u>Date Range:</u> April 1, 2016 to November 7, 2023</p>	
<p>((lose* OR loss* OR (return w/4 investment) OR “ROI” OR (negative w/5 impact) OR (gross w/5 impact) OR (net w/5 impact) OR (GTN w/5 impact)) w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe”)) AND (“Save On” OR SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR accumulat* OR maximiz*)</p>	<p>Consistent with the February 6 Order, JJHCS will not search for or review documents concerning JJHCS’s “return on investment,” or variations thereof. <i>See</i> Dkt. No. 192 at 22.</p>
<p>Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))</p>	<p>Consistent with the February 6 Order, JJHCS will not search for or review documents concerning “communications of budgetary decisions.” Dkt. No. 192 at 19.</p>
<p>(((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)</p>	<p>Consistent with the February 6 Order, JJHCS will not search for or review documents concerning “communications of budgetary decisions.” Dkt. No. 192 at 19.</p>
<p>(brand* OR finance* OR “SCG” OR (strategic /5 customer)) AND (accumulat* OR maximiz*)</p>	<p>JJHCS declines to run this term, which would return any document with “finance” (or variations thereof) in the same document as “accumulator” or “maximizer.” In addition, because Ms. Penkowski oversees the “Strategic Customer Group,” these terms would result in review of every document in which “Strategic Customer Group” or “SCG” appear in a signature block, effectively asking JJHCS to review all documents about “accumulators” or “maximizers.”</p>

<p align="center"><u>Karen Lade Search Terms</u></p> <p align="center"><u>Date Range:</u> April 1, 2016 to November 7, 2023</p>	
SaveOnSP's Proposed Terms	JJHCS's Position
“Save On” (<i>case sensitive</i>)	Accepted
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)	Accepted
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”	Accepted
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)	Accepted
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)	Accepted
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)	Accepted
“other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)	Accepted
(accumulator /5 prog*)	Accepted
“CAPa” OR “CAPm” OR “adjustment program”	Consistent with the Court’s November 7 Order, JJHCS will run this term with a SaveOnSP limiter. <i>See</i> Dkt. No. 173 at 2–3.
PBM* AND (copay* or co-pay*) AND deductible	JJHCS will run the following term, as agreed to by SaveOnSP: PBM* w/50 ((chang* OR increas* OR decreas*) AND (copay* OR co-pay*) AND deductible))

<p align="center"><u>Karen Lade Search Terms</u></p> <p align="center"><u>Date Range:</u> April 1, 2016 to November 7, 2023</p>	
(Max* /15 benefit*) AND (\$20,000 OR \$20K OR 20k)	<p>JJHCS will run the following term, as agreed to by SaveOnSP:</p> <p>(Max* /15 benefit*) w/50 ((chang* OR increas* OR decreas*) AND (\$20,000 OR \$20K OR 20k))</p>
Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))	<p>Consistent with the February 6 Order, JJHCS will not search for or review documents concerning “communications of budgetary decisions.” Dkt. No. 192 at 19.</p>
(((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Uptravi OR Ventavis OR Zytiga))	<p>Consistent with the February 6 Order, JJHCS will not search for or review documents concerning “communications of budgetary decisions.” Dkt. No. 192 at 19.</p>

Exhibit 3



February 15, 2024

Julia Long
(212) 336-2878

VIA EMAIL

Elizabeth H. Snow, Esq.
Selendy Gay, PLLC
1290 Avenue of the Americas
New York, NY 10104

**Re: Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC,
2:23-cv-02632 (JKS) (CLW)**

Dear Elizabeth:

We write in response to SaveOnSP's January 29, 2024 letter regarding search terms for the new custodians added during the January 24, 2024 conference before Judge Wolfson as well as new search terms for the "CAP" custodians.

I. CAP Custodians

SaveOnSP's January 29 letter requests that JJHCS add thirteen search terms that it contends "relate to the CAP program" and concern "discussions regarding J&J's response to SaveOn, accumulators, and maximizers" for Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt (the "CAP" Custodians) for the period April 1, 2016 to November 7, 2023. *See* Jan. 29, 2024 Ltr. from E. Snow to J. Long at 1.

SaveOnSP's proposed search terms go well beyond Judge Wolfson's order, which only required JJHCS to "use CAP-related search terms, including terms that capture discussions by the custodians prior to the creation of the CAP program." Dkt. No. 192 at 26. In keeping with the Court's order, JJHCS agrees to add the following search strings for the time period April 1, 2016 to November 7, 2023:

- (CAPa OR CAPm OR "adjustment program") AND (SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSP)
- ("CAPa" OR "CAPm" OR "adjustment program") AND "Save On" (*case sensitive*)

To the extent SaveOnSP also seeks the addition of the term "CAPa" OR "CAPm" OR "adjustment program," without a SaveOnSP limiter, this proposal is inconsistent with the Court's November 7, 2023 Order. (*See* Dkt. No. 173 at 2-3.) In addition, SaveOnSP now has made an additional motion

Elizabeth H. Snow, Esq.
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to Judge Wolfson to expand the scope of the November 7, 2023 Order. For the reasons discussed in JJHCS's opposition brief filed on February 14, SaveOnSP has no basis to relitigate the November 7, 2023 Order. For the avoidance of doubt, should Judge Wolfson expand the scope of the Court's November 7 Order with respect to the CAP search terms, JJHCS will adopt that application to the CAP custodians for the full time period as well.

As a compromise, JJHCS is prepared to run the following terms:

- SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSP OR "Jody Miller" OR "Ron Krawczyk"
- "Save On" (*case sensitive*)
- "save on" w/50 (accumulat* OR maximiz* OR "essential health benefit*" OR EHB* OR "non-essential health benefit*" OR "nonessential health benefit*" OR NEHB* OR accredo OR ESI OR "express scripts")
- "other offer" W/5 (accumulat* OR maximiz*)
- ("Express Scripts" OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)

However, JJHCS declines to run the following search terms, which have no relation to JJHCS's CAP-related efforts. Indeed, SaveOnSP acknowledged the lack of any connection during the parties' February 12, 2024 meet and confer, when SaveOnSP claimed these terms describe SaveOnSP's "business model." As SaveOnSP well knows, the Court did not direct further discovery on that issue.

- "essential health benefit*" OR EHB* OR "non-essential health benefit" OR "nonessential health benefit*" OR NEHB*
- (essential OR nonessential OR non-essential OR "non essential") w/50 ("Affordable Care Act" OR ACA OR Obamacare)

II. Scott White and Blasine Penkowski

SaveOnSP's letter also requests search terms to be added with respect to two apex custodians, Scott White and Blasine Penkowski. As to Mr. White and Ms. Penkowski, JJHCS agrees to run the following terms:

- SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSP OR "Jody Miller" OR "Ron Krawczyk"
- "Save On" (*case sensitive*)

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- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)

JJHCS declines to run the “CAP” search term over Mr. White’s and Ms. Penkowski’s documents without a SaveOnSP limiter, for the reasons previously discussed, but will agree to run the following search strings for the full April 1, 2016 to November 7, 2023 period consistent with the Court’s November 7 Order:

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)

JJHCS also declines to run the following search terms over Mr. White’s and Ms. Penkowski’s documents, but will search for and produce final contracts and statements of work with Trial Card from non-custodial sources consistent with its January 29, 2024 responses and objections to SaveOnSP’s discovery requests:

- (“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))

Finally, JJHCS declines to add certain proposed financial-related terms, which SaveOnSP requested only as to Ms. Penkowski’s documents. As outlined in JJHCS’s February 8, 2024 letter, and as discussed during the parties’ February 12, 2024 meet and confer, SaveOnSP’s insistence that JJHCS produce these documents is inconsistent with Judge Wolfson’s February 6, 2024 Order. For example, as to issues concerning CarePath’s budget, Judge Wolfson concluded that “[JJHCS] has the better argument” and “communications of budgetary decisions are not relevant to Defendant’s defenses or Plaintiff’s claims.” Dkt. No. 192 at 19. Similarly, as to issues related to return on investment (or “ROI”), Judge Wolfson unambiguously rejected SaveOnSP’s arguments, finding that JJHCS’s “alleged harm is not related to the profitability of any Janssen drugs. Put differently, even if J&J and its [affiliates] ultimately derive profits . . . from selling the drugs at issue, that fact does not disprove Plaintiff’s alleged harm in this case, either to itself or to the public.” *Id.* at 22.

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Accordingly, JJHCS will not run the following terms:

- (brand* OR finance* OR SCG OR (strategic w/5 customer)) AND (accumulat* OR maximiz*)
- ((lose* OR loss* OR (return w/4 investment) OR “ROI” OR (negative w/5 impact) OR (gross w/5 impact) OR (net w/5 impact) OR (GTN w/5 impact)) w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe”)) AND (“Save On” OR Save-OnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR accumulat* OR maximiz*)
- Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
- ((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)

As discussed during the parties’ February 12, 2024 meet and confer, SaveOnSP’s proposal of these terms demonstrates that SaveOnSP refuses to accept the Court’s rulings on an issue already twice litigated—and on which JJHCS has twice prevailed. JJHCS will not provide hit counts for these searches, as they seek documents that are beyond the scope of what Judge Wolfson ordered. If SaveOnSP is willing to meet and confer in good-faith and to propose search terms related to the “small window” that Judge Wolfson opened with respect to budget and financials issues, JJHCS will run SaveOnSP’s requested search terms and provide hit counts, as appropriate. *See* Feb. 8, 2024 Ltr. From J. Long to E. Snow at 2-3.

III. Karen Lade

SaveOnSP proposed thirteen search terms with respect to Ms. Lade’s documents. JJHCS agrees to run the following search terms:

- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
- “Save On” (*case sensitive*)
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)

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- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
- “other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
- accumulator w/5 prog*

For the reasons cited above, JJHCS declines (1) to run the “CAP” search term over Ms. Lade’s documents without a SaveOnSP limiter; and (2) to run financial-related search strings over Ms. Lade’s documents.¹ As with Mr. White and Ms. Penkowski, JJHCS agrees to run the following terms with respect to the CAP program for the April 1, 2016 to November 7, 2023 time period:

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)

As discussed at the parties’ February 12, 2024 meet and confer, JJHCS will consider running two final Lade-specific search strings if those are modified to capture the documents SaveOnSP explained it was seeking. JJHCS offers to run these modified terms, subject to SaveOnSP’s agreement that these strings resolve SaveOnSP’s requests with respect to these strings.

SaveOnSP Proposal	JJHCS Modification
PBM* AND (copay* or co-pay*) AND deductible	PBM* w/50 ((chang* OR increas* OR decreas*) AND (copay* OR co-pay*) AND deductible)

¹ JJHCS declines to run the following financial-related strings, which are beyond the scope of Judge Wolfson’s order:

- ((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)
- Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))

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(Max* /15 benefit*) AND (\$20,000 OR \$20K OR 20k)	(Max* /15 benefit*) w/50 ((chang* OR increas* OR decreas*) AND (\$20,000 OR \$20K OR 20k))
----------------------------------------------------	--------------------------------------------------------------------------------------------

IV. Savaria Harris and Jennifer De Camara

Judge Wolfson ordered production from Ms. Harris and Ms. De Camara’s custodial files on a single, narrow issue: (1) documents and communications between the attorneys and any third-party entities *and* (2) that concern the “new terms and conditions for both its Stelara and Tremfya medications” implemented in January 2022. Dkt. No. 192 at 13-14. SaveOnSP’s requested terms go well beyond these limitations.

For example, SaveOnSP continues to insist on documents with any reference in which “coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*” appear in the same document as the terms “Janssen” or “CarePath” (or variations thereof)—despite Judge Waldor explicitly rejecting that a narrower version of that term at the January 24, 2024 conference. Jan. 24 Tr. at 35:3-37:1 (“MR. SANDICK: Your Honor, Mr. Dunlap said a moment ago words to the effect of, we’re not looking for every time that somebody mentioned discount or coupon, but the search terms that they proposed even after Judge Waldor ordered them to narrow their request are exactly what Mr. Dunlap just said -- JUDGE WOLFSON: It’s not going to happen.”). Accordingly, JJHCS declines to run the following terms:

- (“coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*”) AND (accumulat* OR maximiz* OR “health plan*” OR insur* OR OR Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program” OR program)
- (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term* w/3 condition) OR “T&C” OR “TNC” OR “other offer”)

For the same reason, JJHCS also declines to run the following terms, which are not designed to capture documents concerning the “new terms and conditions for both its Stelara and Tremfya medications”:

- Save On” (*case sensitive*)
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”

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- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)

JJHCS agrees to the remainder of SaveOnSP’s proposed terms for the period proposed by SaveOnSP (January 1, 2021 to November 7, 2023), so long as those documents also mention Stelara and Tremfya (as modified in red font below):

- “other offer” W/5 (accumulat* OR maximiz* OR “health plan*” OR insur*) AND (Stelara OR Tremfya)
- (eligib* or ineligib*) AND “out-of-pocket cost” AND (Stelara OR Tremfya)
- (maximiz* OR optimiz*) AND (\$6,000 OR “maximum program benefit”) AND (Stelara OR Tremfya)
- (\$6,000 OR \$6k OR 6k OR \$9,100 OR \$8,900 OR (OOP) OR (out-of-pocket)) AND (Stelara OR Tremfya)

In addition, JJHCS will consider running the following terms for the period proposed by SaveOnSP (January 1, 2021 to November 7, 2023), subject to SaveOnSP’s agreement that these modifications will resolve SaveOnSP’s requests with respect to Ms. Harris and Ms. De Camara:

- (Stelara OR Tremfya) W/25 ((term* w/3 condition*) OR “T&C*” OR “other offer”))

* * *

JJHCS remains available to meet and confer with respect to SaveOnSP’s proposed search terms.

Very truly yours,

/s/ Julia Long
Julia Long



E. EVANS WOHLFORTH, JR.

666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com
Direct (212) 451-2954

Admitted in New York
and New Jersey

March 4, 2024

VIA E-Mail

Hon. Freda L. Wolfson, U.S.D.J. (ret.)
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

Re: *Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC*
No. 2:22-cv-02632 (JKS) (CLW)

Dear Judge Wolfson:

On behalf of Defendant Save On SP LLC (“**SaveOn**”), we write in response to Johnson & Johnson Health Care Systems, Inc.’s (with its affiliates, “**J&J**”) February 28, 2024 opposition to SaveOn’s February 16, 2024 motion to compel J&J to run the CAP Terms¹ over the custodial files of Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, L.D. Platt, Alison Bar-klage (collectively, the “CAP Custodians”), Scott White, Blasine Penkowski, and Karen Lade.

¹ The CAP Terms are “adjustment program,” “CAPa,” and “CAPm.” J&J agreed to run that term for its original custodians from April 1, 2016 through July 1, 2022. Ex. 1 (Sept. 29, 2023 Email).

J&J does not dispute that the CAP Terms are relevant. Nor could it. Your Honor and Judge Waldor both recognized the CAP Program’s relevance. *See, e.g.*, Dkt. 192 at 25 (reflecting Judge Waldor’s intent for additional discovery regarding the CAP Program); Jan. 24, 2024 Hr’g at 108:21-109:6 (Your Honor indicating that documents related to the CAP Program are relevant).

J&J also does not dispute that each of the nine custodians at issue was heavily involved with the CAP Program, as Your Honor recognized. *See* Dkt. 192 at 26 (regarding the CAP Custodians), 28 (agreeing “White was involved in high level discussions about the CarePath program,” including SaveOn’s impact on the CarePath program and J&J’s response, which necessarily includes the CAP Program), 29 (finding “documents show [Penkowski’s] role in responding to ‘accumulators,’ a term that Plaintiff used internally to refer to SaveOnSP’s programs” and “Lade was involved early on in Plaintiff’s formulation of a response to maximizer and accumulator programs,” so each are appropriate custodians); *see also* Dkt. 173 at 2 (directing parties to negotiate search terms for the CAP Custodians regarding the CAP Program).

J&J also does not dispute that the CAP Terms are targeted to identify documents regarding the CAP Program—and it does not argue that reviewing the documents identified by these terms would be unduly burdensome. *See generally*, Jan. 24, 2024 Hr’g at 108:13-14 (Your Honor asking J&J regarding proposed search terms including the unlimited CAP Terms at issue: “Why wouldn’t [J&J] run them for [the CAP Custodians]?”). To the contrary, J&J fails to provide the hit counts that it would need to substantiate its burden obligation. *Compare* Ex. 2 (Jan 29, 2024 Ltr.) (requesting hit counts for each search term J&J objects to run), *with* Ex. 3 (Feb. 15, 2024 Ltr.).

J&J further does not dispute that running the CAP Terms limited by a “SaveOn” modifier, as it proposes, would be completely subsumed by J&J’s agreement to separately run variations of

that “SaveOn” modifier as a stand-alone term. *See* Opp. at 5.² While it claims to have produced “scores” of documents hitting on its proposed limited CAP Terms, *id.*, this is highly misleading: It has produced 31,959 documents to date, of which only **1,696** hit the **limited** CAP Terms (run through November 7, 2023) but a whopping **9,730** hit the **unlimited** CAP Terms (run only through July 1, 2022)—including numerous relevant documents that the limited terms would have missed. *See, e.g.*, Ex. 4 (JJHCS_00001207) ([REDACTED]

[REDACTED]);

Ex. 6 (JJHCS_00182969) ([REDACTED]

[REDACTED]); Ex. 7 (JJHCS_00142268) ([REDACTED]

[REDACTED].³ The disproportionate hit counts to date confirm that if J&J runs the **unlimited** CAP Terms over the documents that it has yet to produce, those terms would identify a similar a trove of relevant documents—documents that would not be identified by the **limited** CAP Terms.

Otherwise, J&J relies on procedural arguments, all of which fail.

First, J&J tries to paint this motion as duplicative of SaveOn’s February 7, 2024 motion, which also involved the CAP Terms. It is not. The February 7 motion seeks to compel J&J to comply with the November 7, 2023 Order by conducting a full refresh of its document production though that date—which includes running the CAP Terms (to which it already agreed) over J&J’s

² J&J suggests that it agreed to run this “SaveOn” term as a “result of the parties’ negotiations,” Opp. at 5, but in fact Your Honor **told** J&J that this term would be relevant to the newly-ordered custodians, Hr’g Tr. at 110:20-23 (“[T]he terms that would be relevant to them would be referring to SaveON, referring to ESI.”).

³ For the CAP Custodians, J&J has produced a total of 99 documents from Alison Barklage that hit on the limited CAP Terms, 24 from Hoffman, 61 from Kinne, 35 from Longbothum, 89 from Platt, and 48 from Shontz.

original custodians, whom it had agreed to add as custodians prior to the October 30, 2023 conference before Judge Waldor. This motion, in contrast, seeks to compel J&J to run the CAP Terms over its *new* custodians—the CAP Custodians that Judge Waldor compelled J&J to add in her November 7, 2023 Order and those custodians that Your Honor compelled it to add in the February 6, 2024 Order. While J&J should run the CAP Terms for all its custodians, it is especially important that it do so for these new custodians, whom Your Honor found relevant for their involvement in the CAP Program. Dkt. 192 at 26-29.

Second, J&J asserts that SaveOn moves for clarification. It does not. In the February 6, 2024 Order—which J&J does not discuss—Your Honor ordered the parties to negotiate appropriate search terms regarding the CAP Program for the CAP Custodians, Dkt. 192 at 26, and appropriate search terms for White, Penkowski, and Lade, *id.* at 28-29. The parties met and conferred, J&J refused to run the unlimited CAP Terms for any of these custodians, and SaveOn sought relief from Your Honor. There is nothing to clarify.

Third, J&J asserts that the November 7 Order holds that it may run the CAP Terms with a SaveOn limiter in every circumstance. Not so. The portion of that order that J&J cites concerned only SaveOn’s motion (Dkt. 166) to compel J&J to run CAP Terms past the July 1, 2022 discovery cutoff. Dkt. 173 at 2-3. In its February 7 motion, SaveOn explained why that ruling does not allow J&J to run limited CAP Terms for its original custodians in refreshing its document production. Feb. 7, 2024 Mot. at 1-3. Even if that ruling did apply to J&J’s refresh production (it does not), it explicitly does not apply to J&J’s production from its new custodians, for whom Judge Waldor and Your Honor specifically directed the parties to negotiate search terms without any limits on what those terms could be. Dkt. 173 at 2; Dkt. 192 at 26-29; *see also* Dkt. 192 at 26 (“Judge

Waldor’s November Order did not order specific custodian search terms in the hope that the parties would come to a compromise.”).

Finally, J&J accuses SaveOn of using this motion to prolong discovery. The record shows otherwise. J&J does not dispute that it failed to disclose the CAP Program at the start of discovery, despite launching that program months before filing this lawsuit. Dkt. 192 (“SaveOn [did not] learn about the existence of the CAP program until June 2023 (it apparently existed since before J&J filed this case).”). Once SaveOn learned of the program, it promptly began seeking the custodians at issue. *See* Ex. 8 (July. 18, 2023 Ltr); *see also* Ex. 9 (Aug. 28, 2023 Ltr.). J&J ultimately refused to add a single custodian regarding the CAP Program. SaveOn then promptly sought the Court’s intervention, Dkt. 165, and, after the Court ordered J&J to add the CAP Custodians, it promptly proposed search terms. Ex. 2 (Jan. 29, 2024 Ltr.). SaveOn brings this motion because it needs relevant documents regarding the CAP Program that J&J continues to withhold.

SaveOn appreciates Your Honor’s attention to this matter.

Respectfully submitted,

/s/ E. Evans Wohlforth
E. Evans Wohlforth, Jr.
Robinson & Cole LLP
666 Third Avenue, 20th floor
New York, NY 10017-4132
Main (212) 451-2900
Fax (212) 451-2999
ewohlforth@rc.com

Hon. Freda L. Wolfson

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Philippe Z. Selendy (admitted *pro hac vice*)
Andrew R. Dunlap (admitted *pro hac vice*)
Meredith Nelson (admitted *pro hac vice*)
Elizabeth H. Snow (admitted *pro hac vice*)
SELENDY GAY PLLC
1290 Avenue of the Americas
New York, NY 10104
(212) 390-9000

pselendy@selendygay.com
adunlap@selendygay.com
mnelson@selendygay.com
esnow@selendygay.com

Attorneys for Defendant Save On SP, LLC

Exhibit 1

From: Long, Julia (x2878) <jlong@pbwt.com>

Sent: Friday, September 29, 2023 6:23:35 PM

To: Elizabeth Snow <esnow@selendygay.com>; Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>

Cc: Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; David Elsberg <delsberg@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>

Subject: RE: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Counsel:

In an effort to reach compromise and reduce the number of disputes before Judge Waldor at our October 30 conference, JJHCS agrees to run the terms "CAPa," "CAPm" and "adjustment program" for the agreed-upon relevant time period, April 1, 2016 to July 1, 2022.

We hope that this will resolve the dispute. We do not think a demand through to the present by SaveOnSP is appropriate or feasible. As JJHCS has no direct knowledge of SaveOnSP's conduct at issue, JJHCS's documents primarily relate to its awareness and response to SaveOnSP, and this demand amounts to a wholesale update of the production. We note SaveOnSP has rejected even several discrete updates, let alone a wholesale update, of its own production.

Please let us know if our proposed production resolves this dispute.

JJHCS will respond separately to your joint letter on SaveOnSP's interrogatories next week.

Best,
Julia

Julia Long
She | Her | Hers
Associate

Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas

New York, NY 10036

T 212.336.2878

jlong@pbwt.com

From: Elizabeth Snow <esnow@selendygay.com>

Sent: Wednesday, September 27, 2023 12:12 PM

To: Long, Julia (x2878) <jlong@pbwt.com>; Sandick, Harry (x2723) <hsandick@pbwt.com>; Arrow, Sara (x2031) <sarrow@pbwt.com>; LoBiondo, George (x2008) <globiondo@pbwt.com>; Mangi, Adeel A. (x2563) <aamangi@pbwt.com>; ~jgreenbaum@sillscummis.com <jgreenbaum@sillscummis.com>; ~klieb@sillscummis.com <klieb@sillscummis.com>

Cc: Andrew Dunlap <adunlap@selendygay.com>; Meredith Nelson <mnelson@selendygay.com>; ~delsberg@selendygay.com <delsberg@selendygay.com>; Wohlforth, E. Evans <EWohlforth@rc.com>

Subject: JJHCS v. SaveOnSP (Case No. 2:22-cv-02632-ES-CLW)

Caution: External Email!

Counsel,

Please find attached a joint letter that SaveOnSP intends to file with the Court. We ask that you please provide JJHCS's portion by end of day Monday, October 2. We reserve the right to revise in response to any revisions.

Thanks,

Elizabeth

Elizabeth Snow

Associate [\[Email\]](#)

Selendy Gay Elsberg PLLC [\[Web\]](#)

Pronouns: she, her, hers

+1 212.390.9330 [O]

+1 540.409.7257 [M]

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Exhibit 2

Selendy Gay Elsberg PLLC
1290 Avenue of the Americas
New York NY 10104
212.390.9000



Elizabeth Snow
Associate
212 390 9330
esnow@selendygay.com

January 29, 2024

Via E-mail

Julia Long
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
jlong@pbwt.com

Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC* (Case No. 2:22-cv-02632-JKS-CLW)

Dear Julia,

We write to propose search terms for the custodians discussed at and ordered to be added at during the January 24, 2024 conference in front of Special Master Wolfson.

First, as to Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt, Judge Wolfson ordered SaveOn to propose a set of search terms that relate to the CAP program and to discussions regarding J&J's response to SaveOn, accumulators, and maximizers, Tr. at 107:1-111:10, to be run for the full discovery period of April 1, 2016 through November 7, 2023, *id.* 108:21-109:18. SaveOn proposes these terms in Exhibit 1.

Second, as to Scott White, Blasine Penkowski, and Karen Lade, Judge Wolfson ordered J&J to add them as custodians for the full time period and ordered SaveOn to propose targeted search terms for each new custodian. Tr. 128:9-129:13, 131:22-132:13. SaveOn's proposes these terms in Exhibits 2-4.

Third, as to Savaria Harris and Jennifer De Camara, Judge Wolfson ordered that J&J add them as custodian and ordered that SaveOn propose a set of search terms to be run over their communications with third parties from January 1, 2021 through November 7, 2023. Tr. 54:12-23. SaveOn proposes these terms in Exhibit 5.

Julia Long
January 29, 2024

Please let us know by February 2, 2024 if J&J will agree to run these proposed search terms. If J&J objects to running any search term, please provide hit counts that identify the total number of unique documents identified by SaveOn's proposed terms, both individually and in the aggregate.

We reserve all rights and are available to meet and confer.

Best,

/s/ Elizabeth Snow

Elizabeth H. Snow
Associate

Exhibit 1

JJHCS v. SaveOnSP

Search Terms for Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“essential health benefit*” OR EHB* OR “non-essential health benefit” OR “nonessential health benefit*” OR NEHB*
(essential OR nonessential OR non-essential OR “non essential”) w/50 (“Affordable Care Act” OR ACA OR Obamacare)
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“other offer” W/5 (accumulat* OR maximiz*)
CAPa
CAPm
“adjustment program”
(CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
(“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (<i>case sensitive</i>)

Exhibit 2

JJHCS v. SaveOnSP
Search Terms for Scott White
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
(“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))

Exhibit 3

JJHCS v. SaveOnSP
Search Terms for Blasine Penkowski
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
(“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))
(brand* OR finance* OR “SCG” OR (strategic /5 customer)) AND (accumulat* OR maximiz*)
((lose* OR loss* OR (return w/4 investment) OR “ROI” OR (negative w/5 impact) OR (gross w/5 impact) OR (net w/5 impact) OR (GTN w/5 impact)) w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe”)) AND (“Save On” OR SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR accumulat* OR maximiz*)
Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
(((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Uptravi OR Ventavis OR Zytiga)

Exhibit 4

JJHCS v. SaveOnSP
Search Terms for Karen Lade
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“CAPa” OR “CAPm” OR “adjustment program”
(STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Uptravi OR Ventavis OR Zytiga)
Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
“other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
(accumulator /5 prog*)
PBM* AND (copay* or co-pay*) AND deductible
(Max* /15 benefit*) AND (\$20,000 OR \$20K OR 20k)

Exhibit 5

JJHCS v. SaveOnSP
Search Terms for Savaria Harris & Jennifer De Camara
Case No. 2:22-cv-02632-JKS-CLW

Search Terms
“Save On” (case sensitive)
“save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSP OR “Jody Miller” OR “Ron Krawczyk”
(“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
(Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
“other offer” W/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
(eligib* or ineligib*) AND “out-of-pocket cost”
(maximiz* OR optimiz*) AND (\$6,000 OR “maximum program benefit”)
(\$6,000 OR \$6k OR 6k OR \$9,100 OR \$8,900 OR (OOP) OR (out-of-pocket)) AND (Stelara OR Tremfya)
(Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term* w/3 condition) OR “T&C” OR “TNC” OR “other offer”)
(“coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*”) AND (accumulat* OR maximiz* OR “health plan*” OR insur* OR OR Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program” OR program)

Exhibit 3



February 15, 2024

Julia Long
(212) 336-2878

VIA EMAIL

Elizabeth H. Snow, Esq.
Selendy Gay, PLLC
1290 Avenue of the Americas
New York, NY 10104

Re: Johnson & Johnson Health Care Systems, Inc. v. Save On SP, LLC,
2:23-cv-02632 (JKS) (CLW)

Dear Elizabeth:

We write in response to SaveOnSP's January 29, 2024 letter regarding search terms for the new custodians added during the January 24, 2024 conference before Judge Wolfson as well as new search terms for the "CAP" custodians.

I. CAP Custodians

SaveOnSP's January 29 letter requests that JJHCS add thirteen search terms that it contends "relate to the CAP program" and concern "discussions regarding J&J's response to SaveOn, accumulators, and maximizers" for Quinton Kinne, Daphne Longbothum, William Shontz, John Hoffman, Alison Barklage, and L.D. Platt (the "CAP" Custodians) for the period April 1, 2016 to November 7, 2023. *See* Jan. 29, 2024 Ltr. from E. Snow to J. Long at 1.

SaveOnSP's proposed search terms go well beyond Judge Wolfson's order, which only required JJHCS to "use CAP-related search terms, including terms that capture discussions by the custodians prior to the creation of the CAP program." Dkt. No. 192 at 26. In keeping with the Court's order, JJHCS agrees to add the following search strings for the time period April 1, 2016 to November 7, 2023:

- (CAPa OR CAPm OR "adjustment program") AND (SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSP)
- ("CAPa" OR "CAPm" OR "adjustment program") AND "Save On" (*case sensitive*)

To the extent SaveOnSP also seeks the addition of the term "CAPa" OR "CAPm" OR "adjustment program," without a SaveOnSP limiter, this proposal is inconsistent with the Court's November 7, 2023 Order. (*See* Dkt. No. 173 at 2-3.) In addition, SaveOnSP now has made an additional motion

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to Judge Wolfson to expand the scope of the November 7, 2023 Order. For the reasons discussed in JJHCS's opposition brief filed on February 14, SaveOnSP has no basis to relitigate the November 7, 2023 Order. For the avoidance of doubt, should Judge Wolfson expand the scope of the Court's November 7 Order with respect to the CAP search terms, JJHCS will adopt that application to the CAP custodians for the full time period as well.

As a compromise, JJHCS is prepared to run the following terms:

- SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSP OR "Jody Miller" OR "Ron Krawczyk"
- "Save On" (*case sensitive*)
- "save on" w/50 (accumulat* OR maximiz* OR "essential health benefit*" OR EHB* OR "non-essential health benefit*" OR "nonessential health benefit*" OR NEHB* OR accredo OR ESI OR "express scripts")
- "other offer" W/5 (accumulat* OR maximiz*)
- ("Express Scripts" OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)

However, JJHCS declines to run the following search terms, which have no relation to JJHCS's CAP-related efforts. Indeed, SaveOnSP acknowledged the lack of any connection during the parties' February 12, 2024 meet and confer, when SaveOnSP claimed these terms describe SaveOnSP's "business model." As SaveOnSP well knows, the Court did not direct further discovery on that issue.

- "essential health benefit*" OR EHB* OR "non-essential health benefit" OR "nonessential health benefit*" OR NEHB*
- (essential OR nonessential OR non-essential OR "non essential") w/50 ("Affordable Care Act" OR ACA OR Obamacare)

II. Scott White and Blasine Penkowski

SaveOnSP's letter also requests search terms to be added with respect to two apex custodians, Scott White and Blasine Penkowski. As to Mr. White and Ms. Penkowski, JJHCS agrees to run the following terms:

- SaveOnSP OR SaveOn OR "Save On SP" OR "Save OnSP" OR Save-On OR SOSP OR "Jody Miller" OR "Ron Krawczyk"
- "Save On" (*case sensitive*)

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- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)

JJHCS declines to run the “CAP” search term over Mr. White’s and Ms. Penkowski’s documents without a SaveOnSP limiter, for the reasons previously discussed, but will agree to run the following search strings for the full April 1, 2016 to November 7, 2023 period consistent with the Court’s November 7 Order:

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)

JJHCS also declines to run the following search terms over Mr. White’s and Ms. Penkowski’s documents, but will search for and produce final contracts and statements of work with Trial Card from non-custodial sources consistent with its January 29, 2024 responses and objections to SaveOnSP’s discovery requests:

- (“TrialCard” OR “Trial Card” OR TC) AND ((statement* /5 work) OR “SOW*” OR contract*) AND (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR JCP OR “Savings Program” OR “WithMe” OR (with w/2 me))

Finally, JJHCS declines to add certain proposed financial-related terms, which SaveOnSP requested only as to Ms. Penkowski’s documents. As outlined in JJHCS’s February 8, 2024 letter, and as discussed during the parties’ February 12, 2024 meet and confer, SaveOnSP’s insistence that JJHCS produce these documents is inconsistent with Judge Wolfson’s February 6, 2024 Order. For example, as to issues concerning CarePath’s budget, Judge Wolfson concluded that “[JJHCS] has the better argument” and “communications of budgetary decisions are not relevant to Defendant’s defenses or Plaintiff’s claims.” Dkt. No. 192 at 19. Similarly, as to issues related to return on investment (or “ROI”), Judge Wolfson unambiguously rejected SaveOnSP’s arguments, finding that JJHCS’s “alleged harm is not related to the profitability of any Janssen drugs. Put differently, even if J&J and its [affiliates] ultimately derive profits . . . from selling the drugs at issue, that fact does not disprove Plaintiff’s alleged harm in this case, either to itself or to the public.” *Id.* at 22.

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Accordingly, JJHCS will not run the following terms:

- (brand* OR finance* OR SCG OR (strategic w/5 customer)) AND (accumulat* OR maximiz*)
- ((lose* OR loss* OR (return w/4 investment) OR “ROI” OR (negative w/5 impact) OR (gross w/5 impact) OR (net w/5 impact) OR (GTN w/5 impact)) w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe”)) AND (“Save On” OR Save-OnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR accumulat* OR maximiz*)
- Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))
- ((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)

As discussed during the parties’ February 12, 2024 meet and confer, SaveOnSP’s proposal of these terms demonstrates that SaveOnSP refuses to accept the Court’s rulings on an issue already twice litigated—and on which JJHCS has twice prevailed. JJHCS will not provide hit counts for these searches, as they seek documents that are beyond the scope of what Judge Wolfson ordered. If SaveOnSP is willing to meet and confer in good-faith and to propose search terms related to the “small window” that Judge Wolfson opened with respect to budget and financials issues, JJHCS will run SaveOnSP’s requested search terms and provide hit counts, as appropriate. *See* Feb. 8, 2024 Ltr. From J. Long to E. Snow at 2-3.

III. Karen Lade

SaveOnSP proposed thirteen search terms with respect to Ms. Lade’s documents. JJHCS agrees to run the following search terms:

- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”
- “Save On” (*case sensitive*)
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)

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- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)
- (STELARA* OR TREMFYA* OR CarePath OR JCP OR “Savings Program”) w/25 (6000 OR 6,000 OR limit OR eliminate)
- “other offer” w/5 (accumulat* OR maximiz* OR “health plan*” OR insur*)
- accumulator w/5 prog*

For the reasons cited above, JJHCS declines (1) to run the “CAP” search term over Ms. Lade’s documents without a SaveOnSP limiter; and (2) to run financial-related search strings over Ms. Lade’s documents.¹ As with Mr. White and Ms. Penkowski, JJHCS agrees to run the following terms with respect to the CAP program for the April 1, 2016 to November 7, 2023 time period:

- (CAPa OR CAPm OR “adjustment program”) AND (SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp)
- (“CAPa” OR “CAPm” OR “adjustment program”) AND “Save On” (*case sensitive*)

As discussed at the parties’ February 12, 2024 meet and confer, JJHCS will consider running two final Lade-specific search strings if those are modified to capture the documents SaveOnSP explained it was seeking. JJHCS offers to run these modified terms, subject to SaveOnSP’s agreement that these strings resolve SaveOnSP’s requests with respect to these strings.

SaveOnSP Proposal	JJHCS Modification
PBM* AND (copay* or co-pay*) AND deductible	PBM* w/50 ((chang* OR increas* OR decreas*) AND (copay* OR co-pay*) AND deductible)

¹ JJHCS declines to run the following financial-related strings, which are beyond the scope of Judge Wolfson’s order:

- ((\$20,000 OR 20k OR \$6,000 OR 6k) w/10 (set* OR chang* OR determin* OR adjust* OR increas* OR decreas*)) AND (Balversa OR Darzelex OR Faspro OR Erleada OR Imbruvica OR Opsumit OR Prezcobix OR Remicade OR Rybrevant OR Simponi OR Stelara OR Symtuza OR Tracleer OR Tremfya OR Upravi OR Ventavis OR Zytiga)
- Budget* w/10 (CarePath OR (care w/2 path) OR Carpath OR Carepth OR CP OR “WithMe” OR (with w/2 me))

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(Max* /15 benefit*) AND (\$20,000 OR \$20K OR 20k)	(Max* /15 benefit*) w/50 ((chang* OR increas* OR decreas*) AND (\$20,000 OR \$20K OR 20k))
----------------------------------------------------	--------------------------------------------------------------------------------------------

IV. Savaria Harris and Jennifer De Camara

Judge Wolfson ordered production from Ms. Harris and Ms. De Camara’s custodial files on a single, narrow issue: (1) documents and communications between the attorneys and any third-party entities *and* (2) that concern the “new terms and conditions for both its Stelara and Tremfya medications” implemented in January 2022. Dkt. No. 192 at 13-14. SaveOnSP’s requested terms go well beyond these limitations.

For example, SaveOnSP continues to insist on documents with any reference in which “coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*” appear in the same document as the terms “Janssen” or “CarePath” (or variations thereof)—despite Judge Waldor explicitly rejecting that a narrower version of that term at the January 24, 2024 conference. Jan. 24 Tr. at 35:3-37:1 (“MR. SANDICK: Your Honor, Mr. Dunlap said a moment ago words to the effect of, we’re not looking for every time that somebody mentioned discount or coupon, but the search terms that they proposed even after Judge Waldor ordered them to narrow their request are exactly what Mr. Dunlap just said -- JUDGE WOLFSON: It’s not going to happen.”). Accordingly, JJHCS declines to run the following terms:

- (“coupon*” OR “discount*” OR “prescription savings card*” OR “free trial*”) AND (accumulat* OR maximiz* OR “health plan*” OR insur* OR OR Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program” OR program)
- (Janssen OR Jannsen OR Jansen OR CarePath OR “Care Path” OR CP OR JCP OR “Savings Program”) AND ((term* w/3 condition) OR “T&C” OR “TNC” OR “other offer”)

For the same reason, JJHCS also declines to run the following terms, which are not designed to capture documents concerning the “new terms and conditions for both its Stelara and Tremfya medications”:

- Save On” (*case sensitive*)
- “save on” w/50 (accumulat* OR maximiz* OR “essential health benefit*” OR EHB* OR “non-essential health benefit*” OR “nonessential health benefit*” OR NEHB* OR accredo OR ESI OR “express scripts”)
- SaveOnSP OR SaveOn OR “Save On SP” OR “Save OnSP” OR Save-On OR SOSp OR “Jody Miller” OR “Ron Krawczyk”

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- (“Express Scripts” OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz*)
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz*)

JJHCS agrees to the remainder of SaveOnSP’s proposed terms for the period proposed by SaveOnSP (January 1, 2021 to November 7, 2023), so long as those documents also mention Stelara and Tremfya (as modified in red font below):

- “other offer” W/5 (accumulat* OR maximiz* OR “health plan*” OR insur*) AND (Stelara OR Tremfya)
- (eligib* or ineligib*) AND “out-of-pocket cost” AND (Stelara OR Tremfya)
- (maximiz* OR optimiz*) AND (\$6,000 OR “maximum program benefit”) AND (Stelara OR Tremfya)
- (\$6,000 OR \$6k OR 6k OR \$9,100 OR \$8,900 OR (OOP) OR (out-of-pocket)) AND (Stelara OR Tremfya)

In addition, JJHCS will consider running the following terms for the period proposed by SaveOnSP (January 1, 2021 to November 7, 2023), subject to SaveOnSP’s agreement that these modifications will resolve SaveOnSP’s requests with respect to Ms. Harris and Ms. De Camara:

- (Stelara OR Tremfya) W/25 ((term* w/3 condition*) OR “T&C*” OR “other offer”))

* * *

JJHCS remains available to meet and confer with respect to SaveOnSP’s proposed search terms.

Very truly yours,

/s/ Julia Long
Julia Long

EXHIBITS 4-7
CONFIDENTIAL – FILED
UNDER SEAL

Exhibit 8

Selendy Gay Elsberg PLLC
1290 Avenue of the Americas
New York NY 10104
212.390.9000



Elizabeth Snow
Associate
212 390 9330
esnow@selendygay.com

July 18, 2023

Via E-mail

George LoBiondo
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
globiondo@pbwt.com

Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC* (Case No. 2:22-cv-02632-ES-CLW)

Dear George,

We write regarding deficiencies in JJHCS's document production.

I. Organizational Charts

A. Time Period

JJHCS's production does not appear to include organizational charts from before December 1, 2016. Please provide organizational charts covering the full time period from April 1, 2016 through December 1, 2016.

B. Juliette DeShaies

In the joint letter dated June 23, 2023, and in your letter dated May 19, 2023, you stated that Juliette DeShaies is an employee of JJHCS. *See* June 23, 2023 Joint Ltr. at 11. She does not appear on any organizational chart produced to date. Please produce all organizational charts on which she appears, whether from JJHCS or Janssen.

C. Groups in JJHCS's Organizational Charts

Please explain the function of the following groups named in JJHCS's organizational charts.

1. JCP One Platform

George LoBiondo
July 18, 2023

2. CX Operations
3. JCP Customer Experience
4. PECS
5. PX-TA Teams
6. E2E Implementation
7. E2E JALT
8. Patient Access Solutions
9. Patient Access and Affordability Solutions
10. FFS Execution
11. FFS Strategy Management
12. FFS Pharmacy Monitoring & Program Compliance
13. FFS Customer Management
14. CAR-T Patient Services

Please also provide the names of all members of each group, whether employed JJHCS, at Janssen, or elsewhere in the J&J organization.

II. Custodians

After reviewing JJHCS's production, SaveOnSP continues to believe that JJHCS should add as custodians several individuals that it has declined to add. SaveOnSP also proposes one new custodian.

A. Quinton Kinne

In its March 7, 2023 letter, SaveOnSP proposed Quinton Kinne as a custodian because JJHCS named Mr. Kinne as (1) having identified or attempted to identify health plans advised by SaveOnSP or patients enrolled in the SaveOnSP program; and (2) having had responsibility for monitoring and addressing the amount of CarePath copay assistance provided to patients enrolled in the SaveOnSP program. In its March 16, 2023 letter, JJHCS argued that Mr. Kinne's documents are either completely protected by a privilege or other protection from disclosure or would be captured by other custodians, including John Paul Franz.

George LoBiondo
July 18, 2023

JJHCS's production shows that its assertion that Mr. Kinne's documents would be entirely duplicative and entirely privileged is false. For example, in JJHCS_00035757, [REDACTED]

JJHCS_00035757.

Similarly, JJHCS_00008989 [REDACTED]

By definition, Franz could not have been privy to those meetings.

Please confirm that JJHCS will add Mr. Kinne as a custodian.

JJHCS's production also reflects that Mr. Kinne is a member of something called the SMOX Team. JJHCS_00001196. Please explain the function of the SMOX team and provide the names of all its members, whether employed at JJHCS or Janssen or elsewhere in other J&J entities.

B. Leigh Wyszkowski

In its March 7, 2023 letter, SaveOnSP proposed Leigh Wyszkowski as a custodian because JJHCS named her as having identified or attempted to identify health plans advised by SaveOnSP or patients enrolled in the SaveOnSP program. In its March 16, 2023 letter, JJHCS asserted that her communications would be captured by other custodians, including John Paul Franz.

As noted above, JJHCS_00008989 [REDACTED]

[REDACTED] By definition, Franz could not have been privy to those meetings.

Please confirm that JJHCS will add Wyszkowski as a custodian.

C. Daphne Longbothum

In its June 23, 2023 joint letter, JJHCS asserted that Daphne Longbothum is solely an employee of JJHCS, *id.* at 10, and that all her relevant documents would be captured by Nidhi Saxena and Hattie McKelvey.

After a review of JJHCS's production, it is clear that Longbothum's documents are not completely captured by Saxena and McKelvey. For example, [REDACTED], JJHCS_00001393, [REDACTED], JJHCS_00007876;

George LoBiondo
July 18, 2023

JJHCS_00034500, [REDACTED], JJHCS_00034526. These demonstrate that Longbothum's documents are not coextensive with Saxena's and McKelvey's documents.

Please confirm that JJHCS will add Longbothum as a custodian.

D. William Shontz

In its June 23, 2023 joint letter, JJHCS asserted that William Shontz is an employee of JJHCS, *id.* at 11, and that all his relevant documents would be captured by Hattie McKelvey and Silviya McCool.

After a review of JJHCS's production, it is clear that Shontz's documents are not completely captured by McKelvey and McCool. JJHCS_00001202 [REDACTED]

[REDACTED] And many emails include Shontz but neither McKelvey or McCool. *See, e.g.*, JJHCS_0005897 (email from Mr. Robinson to Mr. Shontz stating [REDACTED]); JJHCS_00008556 (emails with Thomas J. Paul and Trial Card regarding the CarePath website); JJHCS_00034500 (email from Thomas J. Paul regarding the CAP program website design); JJHCS_00034531 (emails regarding the ERLEADA CAP program). These demonstrate that Shontz's documents are not coextensive with McKelvey's and McCool's documents.

Please confirm that JJHCS will add Mr. Shontz as a custodian.

E. Alison Barklage

SaveOnSP requests that JJHCS add Alison Barklage as a custodian. Barklage appears to be the person implementing the CAP programs for Janssen's oncology and pulmonary health divisions. JJHCS_00118794. Barklage was privy to an assortment of CAP-related PowerPoint presentations circulated throughout J&J. *See, e.g.*, JJHCS_00069175 (Barklage sending CarePath Introduction slides approved by Janssen's Cardiovascular & Metabolism division); JJHCS_00084681 (Barklage sending a PowerPoint of [REDACTED] which will be used at a JALT meeting); JJHCS_00038647 ([REDACTED]); JJHCS_00029668 (Barklage receiving a copy of [REDACTED]); JJHCS_00038575 ([REDACTED]); JJHCS_00084507 ([REDACTED]). Barklage also received a copy of the IPBC SaveOnSP Training video. JJHCS_00001206. Her work thus concerns JJHCS's response to SaveOnSP and is directly relevant to JJHCS's claims and SaveOnSP's defenses in this action.

Please confirm that JJHCS will add Ms. Barklage as a custodian.

George LoBiondo
July 18, 2023

III. Search Terms

First, in its March 16, 2023 letter, JJHCS refused to remove the limitation for (accumulate* OR maximiz*) within 50 words of Express Scripts (and permutations) and Accredo (and permutations). JJHCS's proposal improperly limits its searches. JJHCS has agreed to produce "all non-privileged documents and communications in its possession relating to the extent of the harm SaveOnSP has caused JJHCS during the relevant Time Period." Feb. 14, 2023 Ltr. from A. Lo-Monaco to M. Nelson at 1-2. The purported harm caused by SaveOnSP may be described in ways that do not explicitly refer to SaveOnSP (or a permutation); JJHCS's productions reflect that it often referred to SaveOnSP as a program created by ESI or ESI's SP. *See* JJHCS_00026405; JJHCS_00000641.

To resolve this issue, SaveOnSP proposes that JJHCS use these terms:

- ("Express Scripts" OR ESI OR ExpressScripts) w/50 (accumulat* OR maximiz* OR copay* OR co-pay* OR coins* OR co-ins* OR "cost share")
- (Accredo OR Acredo) w/50 (accumulat* OR maximiz* OR copay* OR co-pay* OR coins* OR co-ins* OR "cost share")

Please confirm that JJHCS will add these search terms. If JJHCS objects to either term on burden grounds, please provide the number of unique documents returned by that term.

Second, JJHCS agreed to produce all non-privileged documents and communications regarding its understanding of commercial health plans' ability to designate specialty drugs as EHB or NEHB under the ACA and its regulations during the relevant time period. While JJHCS agreed to run a proposed term regarding EHB and NEHB, the following additional term is required to capture the full universe of relevant documents JJHCS agreed to produce: (CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") /100 (ACA OR "Affordable Care Act" OR Obamacare). Please confirm that JJHCS will add this search term. If JJHCS objects to the term on burden grounds, please provide the number of unique documents returned by that term.

Third, JJHCS rejected the following search terms:

- "copay assistance" w/10 program
- (CarePath OR "Care Path" OR CP OR JCP OR "Savings Program") AND (patient w/20 (copay or payment or contrib*)) pay* w/100 (patient w/10 ("high deduc") OR "high-deduc" OR "health savings" OR HSA)
- Copay w/5 accumulat*
- Copay w/5 max*

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Based on JJHCS's productions to date, JJHCS often refers to copay maximizer or accumulators or describes the services SaveOnSP provides at a high level, without explicitly referring to SaveOnSP (or Express Scripts or Accredo). For example, JJHCS_00011151-53 is [REDACTED]

[REDACTED]. The document does not use the terms SaveOnSP, Express Scripts, or Accredo. Although SaveOnSP does not concede it is an accumulator or maximizer, JJHCS refers to SaveOnSP as such. To capture all relevant documents on SaveOnSP's services, JJHCS must add search terms describing SaveOnSP's services, but not mentioning SaveOnSP itself.

Fourth, JJHCS appears to have implemented a program which it calls "CAP" to address the effects of accumulators and maximizers. *See, e.g.*, JJHCS_00001207. JJHCS also appears to use the term "CAPa" to refer to efforts to identify patients on accumulators and "CAPm" to refer to efforts to identify patients on maximizers. *Id.* The following additional term is required to capture the full universe of relevant documents JJHCS agreed to produce: "CAP" OR "CAPm" OR "CAPa."

Please confirm that JJHCS will add these search terms. If JJHCS objects to either term on burden grounds please provide the number of unique documents returned by that term.

*

*

*

Please respond by July 21, 2023. We reserve all rights and are available to meet and confer.

Best,

/s/ Elizabeth Snow

Elizabeth H. Snow
Associate

Exhibit 9

Selendy Gay Elsberg PLLC
1290 Avenue of the Americas
New York NY 10104
212.390.9000



Elizabeth Snow
Associate
212 390 9330
esnow@selendygay.com

August 28, 2023

Via E-mail

Julia Haigney Long
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
jhaigneylong@pbwt.com

Re: *Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC* (Case No. 2:22-cv-02632-JMV-CLW)

Dear Julia,

SaveOnSP writes to ask that JJHCS add the individuals identified below as custodians. Some requests are new; others follow up on prior requests.

If JJHCS objects to adding any individual on the ground that doing so would be unduly burdensome or that their documents would be duplicative or cumulative of those of another custodian, please provide hit counts of how many unique, relevant documents would be identified for that individual by each of the terms that JJHCS has agreed to run or that SaveOnSP has moved the Court for it to run on its existing custodians. *See Steven Madden, Ltd. v. Jasmin Larian, LLC*, 2019 WL 3940112, at *2 (S.D.N.Y. July 8, 2019) (finding vague assertions that proposed custodians' document would be duplicative "unsupported by evidence and meritless").

A. Quinton Kinne

SaveOnSP asks that JJHCS add Quinton Kinne as a custodian. SaveOnSP first made this request in its March 7, 2023 letter. In its July 28, 2023 letter, JJHCS offered to add Kinne as a custodian if SaveOnSP would add Ayesha Zulqarnain and drop all other requests for other custodians; SaveOnSP added Zulquarnain but did not agree to forego all other custodian requests.

Kinne is relevant to this litigation: (1) JJHCS identified Mr. Kinne as (a) having identified or attempted to identify health plans advised by SaveOnSP or patients enrolled in such plans; and (b) having responsibility for monitoring and

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addressing the amount of CarePath copay assistance provided to patients enrolled in SaveOnSP-advised plans, Jan. 17, 2023 JJHCS's Resps. to SaveOnSP's First Interrogatories at 15-16; (2) Kinne serves as the Senior Manager for Pharmacy Monitoring and Program Compliance as part of the Strategic Customer Group of JJHCS, JJHCS_00000358; (3) Kinne worked with John Paul Franz on [REDACTED], JJHCS_00010098; and (4) Kinne circulated [REDACTED], JJHCS_00011143.

Kinne is likely to have unique documents. In its March 16, 2023 letter, JJHCS argued that Kinne's documents would be captured by John Paul Franz's documents. In its July 28, 2023 letter, JJHCS claimed that Kinne's documents would be captured by Lindsey Anderson's documents. Discovery has shown otherwise: (1) Kinne sent an email solely to Alison Barklage to discuss the copay adjustment program (CAP) and saying that he attends the CAP meetings, JJHCS_00035757—indicating that he has unique documents regarding the CAP; and (2) Kinne attended one-on-one meetings with Leigh Wyszowski regarding SaveOnSP, [REDACTED]

[REDACTED], JJHCS_00008989— [REDACTED].

B. Daphne Longbothum

SaveOnSP asks that JJHCS add Daphne Longbothum as a custodian. SaveOnSP first made this request in its May 9, 2023 letter. In its July 28, 2023 letter, JJHCS offered to add Longbothum as a custodian if SaveOnSP would add Ayesha Zulqarnain and drop all other requests for other custodians; SaveOnSP added Zulquarnain but did not agree to forego all other custodian requests.

Longbothum is relevant to this litigation: (1) she is the Manager, Patient Affordability & Access Solutions, Pulmonary Hypertension, for the Janssen Pharmaceutical Companies of Johnson & Johnson, Daphne Longbothum, LINKEDIN, <https://www.linkedin.com/in/daphne-longbothumb734862b> (last visited Aug. 27, 2023); (2) Longbothum circulated the high level deadlines for the pulmonary hypertension CAP program, [REDACTED], JJHCS_00008591; (3) [REDACTED]—JJHCS_00001391, JJHCS_00001464; (4) she appears to have worked on the website for CarePath for Tremfya, JJHCS_00008463; (5) she provided input on the CAP program requirements, JJHCS_00008466; JJHCS_00008584; JJHCS_00008634; and (6) [REDACTED], JJHCS_00008501.

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Longbothum is likely to have unique documents. In its May 19, 2023 letter, JJHCS asserted that all her relevant documents would be captured by Nidhi Saxena's and Hattie McKelvey's documents. In its July 28, 2023 letter, JJHCS asserted that her documents would be captured by Adrienne Minecci's documents. Discovery has shown otherwise: (1) Longbothum spearheaded the effort [REDACTED], JJHCS_00001464—indicating that she would have unique documents about that effort; (2) Longbothum received [REDACTED], JJHCS_00008802—indicating that she would have unique documents on patients identified as belonging to accumulator or maximizer plans; and (3) [REDACTED], JJHCS_00008838—further indicating that she has unique documents on efforts to identify such patients.

C. Juliette Deshaies

SaveOnSP asks that JJHCS add Juliette Deshaies as a custodian. SaveOnSP first made this request in its May 9, 2023 letter.

Deshaies is relevant to this litigation. Per LinkedIn, she was the Group Product Director of the ERLEADA Patient Experience. Juliette Deshaies, LINKEDIN, <https://www.linkedin.com/in/juliette-deshaies-1132b44> (last visited May 9, 2023). As JJHCS represented to the Court, Deshaies worked on the marketing of multiple Janssen Drugs at issue, June 23, 2023 Joint Ltr. at 11, ECF No. 127 (Deshaies's "primary responsibilities related to the marketing of Simponi Aria, Stelara, and Tremfya").

While JJHCS asserted that Deshaies's "primary responsibilities" did not include CarePath, *id.*, discovery shows that Deshaies was heavily involved with that program: (1) she worked closely with Adrienne Minecci on CarePath for Deshaies' "brands" (that is, the drugs she marketed), JJHCS_00059500; (2) she worked with Minecci on patient communications that included CarePath's terms and conditions, JJHCS_00059501 at 3 (requiring eligible patient using commercial insurance), 7 (CarePath's terms and conditions); (3) she was asked for feedback on a presentation [REDACTED], JJHCS_00083826, which included CarePath's terms and conditions; (4) [REDACTED], JJHCS_00110089; JJHCS_00114605; JJHCS_00061959; JJHCS_00061961, including reviewing and seeking approval for program language, JJHCS_00061959, and refreshing the patient website for Simponi Aria to reflect CarePath program language, JJHCS_00114605; and (5) she provided direction [REDACTED], JJHCS_00011144-45.

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Deshaies was also involved in deciding whether JJHCS would establish a copay adjustment program (CAP) for Erleada: (1) [REDACTED]

[REDACTED], JJHCS_00083836; *see also* JJHCS_00083838; (2) she was sent (not just cc'ed) an email regarding a [REDACTED], JJHCS_00083826, and [REDACTED]

Deshaies is likely to have unique documents. In its May 19, 2023 letter, JJHCS asserts that her documents would be cumulative of those in the files of custodians Spilios Asimakopoulos, Heith Jeffcoat, and Lynn Hall. Discovery shows otherwise: (1) Deshaies received an email from McCann regarding [REDACTED], JJHCS_00069842—indicating that she has unique documents regarding the offering of CarePath for Stelara; (2) she had a call with Alison Barklage without any current custodians regarding [REDACTED], *see, e.g.*, JJHCS_00104243—indicating she has unique documents regarding the offering of CarePath for Stelara.

D. Leigh Wyszkowski

SaveOnSP asks that JJHCS add Leigh Wyszkowski as a custodian. SaveOnSP first made this request in its March 7, 2023 letter.

Wyszkowski is relevant to this litigation: (1) she is the Director of Fee for Service (FFS) Execution & Cut Supplier Management as part of the Strategic Customer Groups, JJHCS_00000346; (2) [REDACTED], JJHCS_00026553; (3) [REDACTED], JJHCS_00000551—the other was an employee of KPMG, [REDACTED], JJHCS_00000641 (copying Ms. Wyszkowski); and (4) she assisted Franz in reviewing an employee, JJHCS_00000553, [REDACTED], JJHCS_00000645—indicating that she worked on and/or had knowledge of that response.

Wyszkowski is likely to have unique documents. In its March 16, 2023 letter, JJHCS asserted that her communications would be captured by other custodians, including Franz. Discovery shows otherwise: (1) she attended a one-on-one with Kinne regarding SaveOnSP that, by definition, Franz did not, JJHCS_00008989; (2) Franz stated that [REDACTED], JJHCS_00010064—indicating that Wyszkowski worked on aspects of CarePath without Franz's direct involvement.

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E. William Shontz

SaveOnSP asks that JJHCS add William Shontz as a custodian. SaveOnSP first made this request in its May 9, 2023 letter.

Shontz is relevant to this litigation. Per LinkedIn, he is Associate Director, Patient Access and Affordability Solutions, Oncology at Johnson & Johnson. William (Will) Shontz, LINKEDIN, <https://www.linkedin.com/in/williamtshontz> (last visited May 9, 2023). Shontz worked on the marketing of CarePath.

JJHCS_00104322; see also JJHCS_00104319; JJHCS_00044074.

JJHCS_00104322 at 13.

Shontz worked on setting CarePath's budget and modifying its terms and conditions: (1) he was asked to [REDACTED] JJHCS_00029708; (2) he was included on communications regarding [REDACTED], JJHCS_00030300; (3) he was included on communications regarding [REDACTED], JJHCS_00002355; (4) he corresponded routinely with the vendors Thomas J. Paul, JJHCS_00044011, and TrialCard, including to inform TrialCard that [REDACTED], JJHCS_00104708 (including the changes [REDACTED]).

Shontz also worked on programs that considered reducing copay assistance payments to patients enrolled in SaveOnSP-advised plans: (1) he edited project requirements for a program with [REDACTED], JJHCS_00029831-34; see also JJHCS_00029829 (reflecting that Mr. Shontz provided edits and comments), [REDACTED] JJHCS_00029838; (2) he sent Deshaies a draft presentation for [REDACTED], JJHCS_00083826; (3) [REDACTED] . JJHCS_00104645; and (4) [REDACTED] . JJHCS_00104674.

Shontz is likely to have unique documents. In its May 19, 2023 letter, JJHCS claimed that his documents and communications would be captured by the documents of custodians Nidhi Saxena and Hattie McKelvey. In the June 23, 2023 joint letter, JJHCS asserted that his documents would be captured by the documents of custodians McKelvey and Silviya McCool. Discovery shows otherwise: (1) he received several relevant communications that were not sent to those other

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custodians, JJHCS_00005897; JJHCS_00034500; JJHCS_00034561; JJHCS_00034602—indicating that he received relevant communications directly; (2) he appears on an email regarding [REDACTED], JJHCS_00044011 (later forwarded to a custodian); (3) Shontz apparently gave an approval regarding [REDACTED], JJHCS_00030136—indicating that he either had independent approval authority or the authority to act in McCool’s stead; (4) when McCool was out of the office, she directed people to reach out to Shontz, JJHCS_00001202, and later emails in that thread do not include McCool or McKelvey; and (5) many emails include Shontz but neither McKelvey or McCool, *see, e.g.*, JJHCS_00005897 (email from Mr. Robinson to Mr. Shontz stating [REDACTED]); JJHCS_00008556 (emails with Thomas J. Paul and Trial Card regarding the CarePath website).

F. Alison Barklage

SaveOnSP asks that JJHCS add Alison Barklage as a custodian. SaveOnSP first made this request in its July 18, 2023 letter.

Barklage is relevant to this litigation. While JJHCS asserted in its July 28, 2023 letter that she was a “JJHCS contractor during the relevant period with administrative responsibilities,” LinkedIn states that from 2004 to 2007 she was a Consulting Director at Johnson & Johnson and from 2011 to the present has been the President of AKB Consulting (her own company), in which she “delivers change & project management consulting for large pharmaceutical companies” and “support[s] senior stakeholders with project management on critical business initiatives, including issue identification, stakeholder engagement & communications, project planning, dashboard status reporting, and success measurement plans.”¹

Discovery confirms that her work for JJHCS was substantive: (1) she sent an email regarding [REDACTED], JJHCS_00084174; *see also* JJHCS_00084176, (2) in many instances, Heith Jeffcoat asked for her feedback on relevant presentations, including about the CAP program, JJHCS_00084504; JJHCS_00084426; JJHCS_00084507; (3) she asked Jeffcoat for his thoughts on

¹ Alison Barklage, MHSA, LINKEDIN, https://www.linkedin.com/in/alison-barklage?challengeId=AQFbgDDvMikQdAAAYotJLka16VvflHioohPKqHkyHQq8-x8kcseu4DpAyyTdJVIQsroEHO_irv6te5zBl4ZpmiokUGq-gnyfw&submissionId=a11fb285-55a7-7e17-f8f8-22be33e1a736&challengeSource=AgEdBx4PytP1swAAAYotJO8HtPee3A-dt2H1mjjKjMQQi7fuI_H-PqNqfXcY7m8&challengeType=AgEEI2s1TqMI3QAAAYotJO8LI_gIY5uJoJ4qMy9wQdzaZGx4qhGD2YI&memberId=AgGbLaHzLoTyeAAAYotJO8OUy_dh7q02DhaOAmYeVtVWiY&recognizeDevice=AgFf9b5VuiQntgAAAYotJO8SLSPSWYDoDv5BdP2y1X2lUqTey2kg (last visited Aug. 25, 2023).

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[REDACTED]
[REDACTED] JJHCS_00084681—indicating that she was substantively involved in the decision-making process; (4) she called a meeting regarding [REDACTED]
[REDACTED]

[REDACTED] JJHCS_00117387—indicating that she was driving discussions regarding cost support (e.g., CarePath); and (5) she told others that she was working with Minecci regarding [REDACTED]
[REDACTED], JJHCS_00060430.

Barklage is likely to have unique documents. In its July 28, 2023 letter, JJHCS asserted that her files would be captured by Jeffcoat's documents. Discovery shows otherwise: (1) she was the only sender of an email to Jeffcoat regarding [REDACTED]

[REDACTED], JJHCS_00084681—indicating she has unique information about CarePath's enrollment; (2) she is part of a series of emails about [REDACTED]
[REDACTED]

[REDACTED], JJHCS_00069171—indicating she has unique information about the offering of CarePath for Darzalex; and (3) she sent a presentation that [REDACTED]
[REDACTED]

[REDACTED], JJHCS_00069174—indicating that she has unique information regarding JJHCS's communication efforts regarding CarePath.

G. Blasine Penkowski

SaveOnSP requests that JJHCS add Ms. Penkowski as a custodian.

Penkowski is relevant to this litigation: (1) she serves as the Chief Strategic Customer Officer of JJHCS,² see JJHCS_00000106; (2) [REDACTED]
[REDACTED], JJHCS_00101641 (scheduling a meeting to [REDACTED]
[REDACTED]); JJHCS_00084221 (discussing how SaveOnSP works and revealing [REDACTED]
[REDACTED]); JJHCS_00101570 (sending Penkowski [REDACTED]
[REDACTED])

² In the June 23, 2023 joint letter, JJHCS indicated that Penkowski and Scott White were immune from discovery under the apex doctrine. In fact, “the ‘apex doctrine,’ while it may be applicable to depositions, is not a protective shield that prohibits document discovery from high-ranking executives.” *Sandoz, Inc. v. United Therapeutics Corp.*, 2020 WL 13830525, at *3 (D.N.J. Nov. 16, 2020) (citing *Nat’l Labor Relations Bd v. 710 Long Ridge Rd Operating Co. II, LLC*, 2020 WL3026523 at *2 (D.N.J. June 5, 2020)).

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[REDACTED]); (3) Penkowski called a meeting regarding [REDACTED]
[REDACTED], JJHCS_00083216; and (4) [REDACTED]
[REDACTED], see JJHCS_00001830; JJHCS_00001668 (an individual named Karan
Dhundia [REDACTED]).

Penkowski is likely to have unique documents. In the June 23, 2023 joint letter, JJHCS asserted that her files would be captured by those belonging to Katie Mazuk. Discovery shows otherwise: (1) Penkowski appears on many relevant email threads without Mazuk, see JJHCS_00027236 ([REDACTED]
[REDACTED]); JJHCS_00026852 (Penkowski remained part of those discussions in December 2017); (2) [REDACTED]
[REDACTED], JJHCS_00026519, and *2022 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers* by Adam Fein, JJHCS_00074697—indicating that She directly received unique information about SaveOnSP and other entities that JJHCS deems to be maximizers; (3) she signed many contracts with TrialCard outlining TrialCard’s duties for JJHCS in relation to CarePath, JJHCS_00025908; JJHCS_00025517 (showing modification by Ms. Penkowski, but not Ms. Mazuk); JJHCS_00025532 (same); JJHCS_00024511 (same); JJHCS_00025594 (same)—indicating that she has unique information about JJHCS’s relationship with TrialCard.

H. Scott White

SaveOnSP requests that JJHCS add Mr. White as a custodian.

White is relevant to this litigation: (1) he is a member of JALT and serves as the Company Group Chairman for North America Pharmaceuticals Johnson & Johnson, see JJHCS_00001542; (2) White was forwarded [REDACTED]
[REDACTED], JJHCS_00001704; (3) [REDACTED], see, e.g., JJHCS_00011154 (a December 17, 2021 meeting with the subject [REDACTED]
[REDACTED]); JJHCS_00041213 ([REDACTED]); and (4) [REDACTED]
[REDACTED] see JJHCS_00001830; JJHCS_00001668 ([REDACTED]).

White is likely to have unique documents. In its June 23, 2023 joint letter, JJHCS asserted that his files would be captured by Mazuk’s documents. Discovery

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shows otherwise: (1) [REDACTED], JJHCS_00100210, *see also* JJHCS_00100213 ([REDACTED])—indicating [REDACTED]; (2) he signed work orders and change orders with TrialCard, JJHCS_00039767; JJHCS_00039772; JJHCS_00039696; JJHCS_00039374; JJHCS_00039378; JJHCS_00039382; JJHCS_00039625; JJHCS_00039879—indicating that he has unique information about JJHCS’s relationship with TrialCard.

I. Karen Lade

SaveOnSP requests that JJHCS add Karen Lade as a custodian.

Lade is relevant to this litigation. She appears to be a Product Director, Integrated Customer Solution, Patient Affordability Strategy at Janssen Immunology,³ JJHCS_00002688. She performed significant work related to CarePath:

(1) [REDACTED] JJHCS_00083183; *see also* JJHCS_00083894 (sharing [REDACTED]); (2) she was asked to send custodian Spilios Asimakopoulos [REDACTED] JJHCS_00083180—indicating that she was deeply involved with CarePath’s role; (3) she worked on [REDACTED], JJHCS_00105296; and (4) she provided [REDACTED], JJHCS_00045468.

Lade is likely to have unique documents. In the June 23, 2023 joint letter, JJHCS asserted that she was not likely to have unique documents because she simply provided information about CarePath to other JJHCS personnel. Discovery shows otherwise: (1) Lade sent emails regarding CarePath in 2016 to Jeffcoat, attaching other emails regarding CarePath with no custodian as a party. JJHCS_00083929 (attaching JJHCS_00083930); (2) she sent emails regarding [REDACTED], JJHCS_00083930—indicating that she has unique information about those goals; and (3) she is listed [REDACTED], JJHCS_00083931; *see also* JJHCS_00083932 (same)—indicating that she has unique information about questions from those representatives involving CarePath.

J. L.D. Platt

SaveOnSP asks that JJHCS add L.D. Platt as a custodian. He is relevant to this litigation: (1) JJHCS identified him as an individual who provided input on communications related to this Action,” July 28, 2023 JJHCS Suppl. Resps. to SaveOnSP’s First Interrogatories at 12, and he has emailed with JJHCS’s lawyers

³ Ms. Lade does not appear on any organizational chart produced to date by JJHCS.

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regarding communications about this lawsuit, JJHCS_00027998; (2) [REDACTED]
[REDACTED], JJHCS_00100535;
JJHCS_00008448; JJHCS_00008451; JJHCS_00037157; (3) [REDACTED]
[REDACTED], JJHCS_00008447; (4) [REDACTED]
[REDACTED], JJHCS_00027996;
JJHCS_00008450; JJHCS_00037156; (5) [REDACTED]
[REDACTED], JJHCS_00027974; (6) [REDACTED]
[REDACTED], JJHCS_00001707; (7) [REDACTED]
[REDACTED]
JJHCS_00001668.

K. Ernie Knewitz

SaveOnSP asks that JJHCS add Ernie Knewitz as a custodian. He is relevant to this litigation: (1) JJHCS identified him as an individual who provided input on communications related to this Action,” July 28, 2023 JJHCS Suppl. Resps. to SaveOnSP’s First Interrogatories at 12; (2) he is the Regional Pharmaceutical Communications Leader, the Americas, and a member of the JALT, JJHCS_00001859; (3) [REDACTED]
[REDACTED], JJHCS_00001857; (4) [REDACTED]
[REDACTED], JJHCS_00083266; (5) [REDACTED]
JJHCS_00100210; (6) [REDACTED]
[REDACTED], JJHCS_00041213, and [REDACTED]
[REDACTED], JJHCS_00001704.

L. Silas Martin

SaveOnSP asks that JJHCS add Silas Martin as a custodian. He is relevant to this litigation: (1) JJHCS identified him as a person who had responsibility for JJHCS’s understanding of the terms ‘copay accumulator’ and ‘copay maximizer,” July 28, 2023 JJHCS Suppl. Resps. to SaveOnSP’s First Interrogatories at 23-24; (2) [REDACTED]
JJHCS_00114446; and (3) [REDACTED]
[REDACTED]
JJHCS_00001594.

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M. John Hoffman

SaveOnSP asks that JJHCS add John Hoffman as a custodian. He is relevant to this litigation: (1) JJHCS identified him as a person who had responsibility for JJHCS's understanding of the terms 'copay accumulator' and 'copay maximizer,'" July 28, 2023 JJHCS Suppl. Resps. to SaveOnSP's First Interrogatories at 23-24; (2) per LinkedIn, as the former head of Health Policy & Advocacy at Johnson & Johnson, he "help[ed] to enact state legislation prohibiting non-medical switching and copay accumulator and maximizer programs";⁴ and (3) [REDACTED]

[REDACTED], JJHCS_00027236; JJHCS_00026852; (4)

[REDACTED], JJHCS_00101570; (5)

[REDACTED], JJHCS_00100210; JJHCS_00126949; and (6) [REDACTED]
[REDACTED], JJHCS_00114446.

* * *

We request a response by September 5, 2023.

We reserve all rights and are available to meet and confer.

Best,

/s/ Elizabeth Snow

Elizabeth H. Snow
Associate

⁴ John Hoffman, LINKEDIN, https://www.linkedin.com/in/john-hoffman-b788147?challengeId=AQHlg4eOVL86lAAAYovUZQ9SsGyvdo2HYtutCig6Xv1wLmAESYejIZNNUm5tj_f3xXdkNRIsO2pKckOxXoyNv2iDuWS_CHTJA&submissionId=8oad3273-86c8-7e17-a1fe-77f347742717&challengeSource=AgH1X6LAia67HwAAAYovU4AHBhdazZxe-czPqZAJJoV21oKYm5wu7ZSjcwBLBnKw&challengeType=AgGRK-8FFEdBJgAAAYovU4AJHwvS8UwxYtNjfsJqMYjqd1mPyaC3LvM&memberId=AgGo7hRMgBgEJAAAAAYovU4AMGQyolcdLCH7f9bLEylRddVo&recognizeDevice=AgGseyLBagE6qAAAAAYovU4APYASa3jZyEgK9oMKGoBoiwT_Pf69U (last visited Aug. 25, 2023)